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RECORD EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2023,
No. 61

JUSTIN HOLDER
Appellant
V.
BENJAMIN ESTES
Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 5A

JUSTIN HOLDER
APPELLANT

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *
Plaintiff *
v. * **CASE NO. C-21-CV-20-430**
JUSTIN HOLDER, et al. *
Defendants *

TRANSCRIPT OF PROCEEDINGS

(PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT)

(ZOOM HEARING)

Circuit Court
Hagerstown, MD
August 2, 2022 at 9:33 a.m.

Before:

The Honorable Andrew F. Wilkinson

Appearances:

Alyse Prawde, Esquire, attorney for Plaintiff, Benjamin Estes (Zoom); and

Justin Holder, Defendant, pro se (Zoom); and

Brandy Peeples, Esquire, attorney for Defendant, Deena Holder (Zoom); and

Robert Kline, Esquire, attorney for Defendant, Uncle Eddies Broken Down Palace, In Person.

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PROCEEDINGS

THE COURT: Everybody have a seat. Good morning Mr. Kline.

MR. KLINE: Good morning, Judge.

THE COURT: How are you?

MR. KLINE: I’m well. How are you today, sir?

THE COURT: Good. You could have been on Zoom.

MR. KLINE: I could have but I had two criminal matters that got postponed later yesterday afternoon, and in an effort to speak with them to tell them they had been postponed I was already planning on coming, Your Honor.

THE COURT: I got you.

MR. KLINE: But thank you. Yes, I could have been in my pajama bottoms with a blue blazer and a shirt on and a tie.

THE COURT: That would have been fantastic. I would have assumed as much. Alright. Are you ready to go?

MR. KLINE: Yes, sir.

THE COURT: Dawn, let’s have the other folks please. (Parties being linked into ZOOM and is broadcast through the courtroom) Alright, Mr. Holder, can you hear me?

MR. HOLDER: Yes, I can, Your Honor. Thank you. Good morning.

THE COURT: Good morning. Go ahead and go on mute for now, okay. Ms. Peeples, can you hear me?

MS. PEEPLES: Yes, Your Honor, I can hear you.

THE COURT: Ms., is it Prawde?

MS. PRAWDE: Prawde, Your Honor. Good morning. Yes, I can hear you.

THE COURT: Okay, and Mr. Estes, can you hear me?

MR. ESTES: Yes, I can. Good morning, Your Honor.

THE COURT: Good morning. Okay, I have Mr. Kline here this morning here with me in the courtroom. I think you can see him at the far counsel table. This is case number C-21-CV-20-430. There is a Second Amended Complaint filed by the Plaintiff. There was a Scheduling Order indicating that this matter will go to trial on October 4, 5 and 6, bench trial. There was a dispositive motions deadline of June 21. There was an order to bifurcate that indicates that for the three-day bench trial the issues will be Count 5 and Count 6. And it looks like the Motion for Summary Judgment was filed by the Plaintiff Right in Time and this hearing was scheduled back with the Scheduling Order. I granted all counsel and parties the opportunity to appear by Zoom today because I know folks are out of town and it is a tough time of year and we're sort of used to doing Zoom now.

So, I think that we are here today on Plaintiff's

Motion for Summary Judgment. Ms. Prawde, is that correct?

MS. PRAWDE: Yes, Your Honor, that's correct.

THE COURT: Okay. Mr. Kline, I'll go through Defense counsel first. Do you think we're here for anything else today?

MR. KLINE: No, Your Honor.

THE COURT: Okay.

MR. KLINE: I'm sorry. Ms. Peeples did file a correspondence to the Court.

THE COURT: I saw it.

MR. KLINE: I don't know whether the Court wants to take that up today?

THE COURT: We will talk about that. Ms. Peeples, I saw that you filed an additional piece of correspondence, a request. Before we get to that, other than the Plaintiff's Motion for Summary Judgment, are we here for anything else today?

MS. PEEPLES: No, Your Honor.

THE COURT: Okay, and Mr. Holder, are you pro se?

MR. HOLDER: Yes, I am, Your Honor.

THE COURT: Okay, and other than the Plaintiff's Motion for Summary Judgment, Ms. Peeples letter that she filed, are we here for anything else today?

MR. HOLDER: I believe there's one open motion to

Alter Amend a Bill Quia Timet that we had talked about back in March. That's the only other open motion that I was aware of in this case, Your Honor.

THE COURT: Okay, and that was the one that was filed a long time ago, right?

MR. HOLDER: That's correct, Your Honor.

THE COURT: Okay, that's sitting on my desk.

MR. HOLDER: Okay.

THE COURT: I saw it today as I was pulling my file, okay.

MR. HOLDER: Okay, thank you, Your Honor.

THE COURT: Okay. Alright. Ms. Peeples, remind me about this letter as we go, okay. We'll handle that as we go.

MS. PEEPLES: I will, Your Honor.

THE COURT: Okay. But let's proceed then with the hearing on Plaintiff's Motion for Summary Judgment. I have reviewed it. I reviewed opposition. Are you ready to proceed Ms. Prawde?

MS. PRAWDE: Yes, Your Honor. Thank you.

THE COURT: Go ahead.

MS. PRAWDE: Thank you, Your Honor. Alyse Prawde on behalf of the Plaintiff, Benjamin Estes. Your Honor, as you know and are very familiar with from reading these pleadings and the motions that have been filed in this case, this action arose from a series of trespasses by the Defendant, Justin Holder, onto the Plaintiff's property. These trespasses involved a Mr. Holder walking onto Mr. Estes property on multiple occasions as well as cutting down, injuring, and otherwise destroying numerous trees, vegetation, shrubs, brush on Mr. Estes property. Mr. Estes filed a Complaint back in November of 2020, alleging trespass, alleging a statutory claim pursuant to Section 5-409 of the Natural Resources Article, as well as several other torts. We have filed a Motion for Summary Judgment as to all claims other than our claim for private, or for nuisance.

And, Your Honor, just to sort of limit that a bit, Plaintiff is withdrawing its Motion for Summary Judgment just against Defendant, Deena Holder, as to the claims for trespass, violation of 5-409, and aiding and abetting. To just be clear, Plaintiff is only proceeding against Ms. Holder today as to Quiet Title and Ejectment. And it's proceeding against Mr. Holder and Defendant Uncle Eddies Broke Down Palace, LLC, as to all claims in the Second Amended Complaint other than Nuisance.

Your Honor, there's no genuine dispute of facts here. The issue of interpreting the surveys and the deeds that are at issue in this case that's a matter of law. There's not a factual dispute regarding those. Mr.

Holder has not disputed in his opposition that he did in fact cut down trees, did cut down brush and other vegetation. There’s not a factual dispute about that.

In order to avoid liability as to trespass, Mr. Holder has raised a dispute regarding the location of the boundary between Mr. Estes property and property that is owned by Defendant Uncle Eddies. Mr. Estes has clear title to the property, to his property. That’s the subject of his action both by record title as well as by adverse possession. Deena Holder has made clear in her opposition that she is not claiming any sort of interest or title into this area of property that’s disputed. Mr. Holder, it’s his burden to show superior title as to the Quiet Title, he has not provided any evidence whatsoever that he has any sort of title here. The only possible Defendant who has any sort of possible claim to superior title would strictly be Uncle Eddies, the Defendant. And as you’ll hear, Uncle Eddies is a New Mexico, LLC. It has never been registered in the State of Maryland. It’s not been registered in the State of Maryland as a foreign LLC. And my understanding is that it is owned, or that its sole members and other New Mexico, LLC, that is also not registered in the State of Maryland.

Your Honor, Mr. Holder has burdened the Court system here and has ignored the plain language of the deeds and the change of title for both Uncle Eddies property and Mr. Estes property as well as the opinions of the highly competent and well-respected land surveyor Mr. Frederick, who has been doing this for over fifty-years and has prepared surveys as to both properties at least as to Mr. Estes going back to 1990, 1993, 2006, and then the Uncle Eddies property back in 2019.

Your Honor, I know you're familiar with the papers. But just a little bit as to some factual background, I'm going to try to not repeat the papers too much since I know you have read them. The Estes property from 1993 to 2013 was owned by Maxwell and Yvonne Hope and that's known as lot 2, Mt. Hebron Road. They continuously maintained open, notorious exhausted in actual possession of the Estes property. Mr. Estes began leasing that property in 2010, and then he bought that property from the Hopes in 2013. That deed is recorded in the Land Records as liber 4401, 100-103. The deed in 2013 to Mr. Estes describes the property as being all of lot 2 on the platted subdivision prepared by Mr. Frederick's firm and recorded in plat folio 9186 in the Land Records. And that's Exhibit 2 to Plaintiff's Motion for Summary Judgment. And, Your Honor, that property as described in plat 9106 that we're seeking Quite Title in Mr. Estes' favor of today.

And Mr. Estes has attested that back in September of 2010, years before he knew who Mr. Holder was, years before any property dispute arose, that Mr. Hope had shown him exactly where their property was and that he showed him that it included land west of the Little Antietam Creek. He pointed out exactly where that was. He also pointed out to Mr. Estes a fence or a part of a fence that was on that west side of the creek and indicating that their possession went to there. The Uncle Eddies property was purchased, my understanding is, by Uncle Eddies back in April 2018. It was then transferred for zero dollars to Deena Holder. It was then transferred back to Uncle Eddies for zero dollars later that year.

Beginning in October of 2018, and continuing throughout 2019 and 2020, Mr. Holder trespassed onto the property that is included as plat 9186 that's Mr. Estes' property. He repeatedly entered onto that property. Additionally, he cut down and destroyed numerous trees, brush, other vegetation that was on the east side of the creek that was on Mr. Estes' property.

We've included with our Motion for Summary Judgment an Affidavit from Mr. Estes as Exhibit 1, which includes his attestation related to conversations that Mr. Holder had with him acknowledging that he had cut down trees, acknowledging that he had been on Mr. Estes' property, acknowledging that he had cut down part of that boundary fence. We've also included text messages. We've included a picture that Mr. Estes has taken. That's just one of several pictures showing Mr. Holder on his property as well as a video, I believe it's Exhibit 9, that was submitted to the Court that Mr. Holder himself took showing him on Mr. Estes' property and also making reference to cutting down trees or other vegetation. So, all of that, Your Honor, I believe is Exhibit 6 through 9 in our Motion for Summary Judgment.

In turning to the claim for Quiet Title, which is Plaintiff's Count 5. In a Quiet Title Action, the Plaintiff just needs to show clear proof of possession in a legal claim to title. Clear proof does not require clear and convincing evidence. It's just a preponderance of the evidence standard. Plaintiff only needs to show a color of title at a minimum. Here Mr. Estes both has color of title at a minimum but also his claim to title is clear from through his legal claim to title.

Plaintiff has proven clear proof of possession through a legal claim to title or in Maryland as I said through color of title. Exhibit 3 is the 2013 deed from the Hopes to Mr. Estes, which say that they're conveying to him the property that's described in plat 9186, which was prepared by Mr. Frederick back in 2007. This deed, as well as that survey, is recorded in the Land Records of Washington County. It clearly shows the location of Plaintiff's property, which includes in part land that crosses over the Little Antietam Creek.

Your Honor, that is sufficient for at least color of title at a very minimum. Mr. Estes when that property was conveyed to him it was his understanding that this was his property, this was what was in the land records. But even beyond that I think it's clear from the chain of title that Mr. Estes had a legal claim of title. So, then for Quiet Title the burden shifts to any Defendants to show that they have superior title. The Defendants in no way have met that burden.

As I said in my introduction the Defendant Deena Holder, it's my understanding, is not claiming any sort of interest or title to the property that's in dispute. She's provided no evidence that she has interest for a title to that property. Mr. Holder as well does not have any sort of interest or title to that property let alone being able to show that he personally has any sort of superior title. Again, the only possible Defendant is Uncle Eddies given that that is shares the boundary line with Mr. Estes. But for the reasons that are in our papers and that I'm going to discuss today Uncle Eddies cannot show, has not met its burden of showing that it has superior title here. Again, Uncle Estes (sic) is a New Mexico, LLC, not registered with the State of Maryland, not registered as a foreign LLC with SDAT. And just to point out Maryland Rule 12-809 requires that answer in a Quiet Title Action be verified under oath. The Uncle Eddies answer in this case was signed by Justin Holder under the penalties of perjury saying that he is a member of Uncle Eddies. It is my understanding that he is not a member, has never been a member. There's therefore been no valid signature by anyone on behalf of Uncle Eddies, which it's our, it's our belief that Uncle Eddies is not lawfully able to do business, to buy or sell property in the State of Maryland and that that answer was not properly filed by Uncle Eddies as to any potential argument that it may have as to title in this property.

The deed where the land was conveyed to Uncle Eddies back in 2019 that refers to a plat prepared by Mr. Frederick. That is plat 10955. Just checking on the Exhibit. That's Exhibit 4 to our Motion for Summary Judgment. The boundary line there is consistent with the boundary line in plat 9186. It shows that the, that the boundary between the two properties crosses over Little Antietam Creek. And that that property across the creek, that that property across the creek is Mr. Estes property.

And, Your Honor, may I share my screen just to pull up one or two of those plats I mentioned if you think it would be helpful? They are Exhibits to our Motion for Summary Judgment.

THE COURT: Yes, before you do that, plat 10955, you indicated that that went along with a deed.

MS. PRAWDE: Yes, Your Honor.

THE COURT: Give me the deed number again. I thought you said it. It was 2019. It must have been the deed that reconfigured Uncle Eddies.

MS. PRAWDE: Yes, that's correct, Your Honor.

THE COURT: Okay.

MS. PRAWDE: I'm just seeing if I can quickly find it for you. But it's the 2019 deed.

THE COURT: I don't think you gave me the number. I'll find it.

MS. PRAWDE: I believe it might be Exhibit 5, I think it's April 10, 2018, Exhibit 5 to the Motion for Summary Judgment is the deed.

THE COURT: Okay. And before we start sharing screens, I want to ask a quick question. Uncle Eddies you're indicating that it's a New Mexico, LLC. It purportedly is managed by another New Mexico, LLC, neither of which have been fully formed through proper organization as of my last trial. Not qualified to do business in Maryland and therefore you indicated they, Uncle Eddies, cannot own land lawfully in Maryland because it's not qualified to do business in Maryland. Can they defend a lawsuit? I think if you're not qualified - -

MS. PRAWDE: Your Honor, I believe - -

THE COURT: You can't bring a lawsuit if you're not qualified. Can you defend?

MS. PRAWDE: Yes, you can defend a lawsuit.

THE COURT: Okay. Okay. If you want to start sharing screens that be fine.

MS. PRAWDE: And, Your Honor, can you see my screen?

THE COURT: I only see you. Yes, it's starting to come up.

MS. PRAWDE: Okay. And, Your Honor, not to jump around too much and I don't want to wrong the Court by sharing a bunch of screens I just have a couple I want to pull up to hopefully help the Court. So - -

THE COURT: Ms. Prawde, hang on a second. Mr. Kline and I just see a blank screen. Dawn, is there something I need to do? Here it comes, okay. I got it. Ms. Peeples, can you see it?

MS. PEEPLES: Yes, Your Honor, I can see it.

THE COURT: Mr. Holder, Mr. Estes, are you both okay? Just chime in if you can’t see it gentlemen. Okay, it’s - -

MS. PRAWDE: Your Honor, Exhibit 4, which is what is pulled up on the screen is plat number 10955. This was prepared by Mr. Frederick in 2019. It’s acknowledged by Deena Holder and Uncle Eddies as well as to this preparation of this plat. And this dark line where my cursor is that’s running where it says Little Antietam, this dark line up here, that is the boundary line. I think it would be helpful if I show you Exhibit 11 to our Motion for Summary Judgment. So, what is highlighted there in red that is the boundary line of Mr. Estes, the shared boundary line between Uncle Eddies and Mr. Estes’ property. The black cross lines towards the south that is Mr. Estes’ property and then to the west of the red line, the blue crossed lines that is Uncle Eddies property. What’s been highlighted is in yellow is where there is this dispute about the property. But, again, Your Honor, what we’re seeking a Quiet Title here is that this red line in plat 10955, which is the same line that’s reflected in 9186 from 2007, that same boundary line that that is the appropriate boundary line. And just so Your Honor is clear, so, you can see Little Antietam Creek, which is running below this red line and then up through here where my cursor is and so Mr. Estes' property includes this area of land that is to the west of the property. I'm sorry, it's to the west of Little Antietam Creek. The trees that were cut down run throughout this yellow shaded area. The trespass by Mr. Holder includes obviously that yellow area where the trees were cut down as well as the trespass far into Mr. Estes' property near where my cursor is, near where this other atributary runs. And that's where that video was taken, which I believe is Exhibit 9 to our property.

And just the last plat that I will show is Exhibit 2, which is 9186, which was prepared in 2007, by Mr. Frederick. And again, this is just as to Mr. Estes' property. It's similarly showing to the left here the Little Antietam Creek and it's showing this sort of peninsula where my cursor is to the left, to the west of the creek where Mr. Estes', which is part of Mr. Estes' property.

THE COURT: And so that I understand the line in 9186 by Mr. Frederick and the line in 10955 by Mr. Frederick is the same line?

MS. PRAWDE: Yes, Your Honor.

THE COURT: Okay. Quick question before you move on then, you indicated the trespass occurred in that highlighted area. Are you indicating to me that Mr. - -

Without looking at the video that Mr. Holder has admitted in his pleadings or in deposition that yes, in fact, he did go into that yellow area and did in fact cut down trees?

MS. PRAWDE: Um, Your Honor, we have included, we don't have deposition transcripts of or a deposition of Mr. Holder in this matter. We do have an Affidavit from Mr. Estes as to where he saw Mr. Holder.

THE COURT: Okay.

MS. PRAWDE: As well as text messages, emails, pictures that Mr. Estes has attested to shows Mr. Holder on that part of the property, that yellow shaded as well as photos in the record of trees that have been cut down and destroyed on that yellow part of the property. You know, in Mr. Holder's opposition, as well as Uncle Eddies opposition, to the Motion for Summary Judgment here, they did not include any sort of Affidavit saying that there was a genuine dispute of facts as to that. There's nothing in their opposition where Mr. Holder says, you know, I didn't go up to that area of the property. I didn't cut down trees. There does not seem to be a dispute of fact as to that.

THE COURT: Okay.

MS. PRAWDE: Okay. Thank you. And, Your Honor, as to the, as to showing that there's no superior title here that any of the defendants have the change of title for both the Estes property and the Holder properties going back at least a hundred years. They clearly show that the boundary line between the properties, at least in part, is on the west side of Little Antietam Creek. That the Estes property does include land that's on that west side of Little Antietam Creek. Both chains of title contain specific calls and distances for that boundary line that did not run down Little Antietam Creek and in fact expressly leave the creek and run beyond the western edge of the creek to where the properties do share a boundary because of that there's that small peninsula on the west side of Little Antietam Creek that I had pointed out that's separate from the bulk of the Estes property. It's across the creek but it's still owned by the Plaintiff. The legal descriptions for in the chain of title for both the Uncle Eddies property and Mr. Estes' property do contain a line, which follows the Little Antietam Creek before it calls for - - There's a call for the remainder of the boundary line to go up, to leave Little Antietam Creek to follow a set of stones at specific courses and distances. And Mr. Frederick opined that the reference to the stones the courses and distances are meant to show that the boundary line does not follow strictly Little Antietam Creek and that if it had any intention that, you know, that the descriptions would of just said following the creek. But instead, it goes up to a set of stones to the west side of the creek.

And I believe Your Honor is very familiar with Mr. Frederick, but just if I may briefly. He’s a professional land surveyor, licensed in the State of Maryland as well as licensed engineer. He’s the President of Frederick Seibert and Associates, a land surveying company that was founded over eighty years ago. He’s been doing this for over fifty years. He’s testified as an expert in the field of land surveying over a dozen times. He was not retained or paid by any of the parties in this case but he did testify in this case related to the surveys that he did, again, going back to the 1990’s as well as his review of the chains of title for both properties. He opined in his deposition to a reasonable degree of professional certainty that the shared boundary line that is shown on 9186 and plat 10955 accurately depicts the actual boundary line between Mr. Estes and Mr. Holder’s properties. Mr. Frederick also testified that the that looking back at the chain of title for the Holder property it always starts on the west side of the creek and the stone is near the west abutting that west side of the creek. And the stone is near west abutment on that west side of the creek. And that it the boundary line went down the creek but then also went up to a series of stones. That is on the west bank of the creek. Nowhere it’s not in the middle of the creek as Mr. Holder seems to be arguing here.

And Mr. Frederick had prepared a survey back in 1990. And we’ve included a Confirmatory Deed, it’s our Exhibit 12 to our Motion for Summary Judgment. That reflects the conveyance from Ellis Remsburg to Richard Jolles and that was before Richard Jolles had conveyed it to the Hopes then conveyed the property to Mr. Estes. And in that description of the property back in 1990, again, this is our Exhibit 12. It included reference that the Estes property is and I’m reading directly from the description in that 1990 deed. “Crossing the Little Antietam Creek, North 37 degrees, 15 minutes 31 seconds West 279.21 feet to an iron pin and cap set, thence along the west side of said creek.” And that included calls to a fence post, to another fence post to a blazed fence line tree. And it says, “thence crossing the Little Antietam Creek.”

As Mr. Frederick testified and I think as an interpretation of that deed can be made is unambiguous that there’s substantial calls in the deed to the west side of the creek. Mr. Frederick testified that back in 1990 he saw a blazed tree indicating to him that that was a something that had been done by surveyors well into the past indicating the corner of a property that he saw a fence post in fence lines that looked to have been there for many years indicating to him that the Estes property ran across that west bank of Little Antietam Creek. Again, those fence posts, those fences, those blazed trees, that not something that Mr. Frederick put there. Must have been there for many years. He testified it seems obvious to him that the fence was placed a long time ago. And that Mr. Remsburg back in 1990 or his predecessors knew that their property ran across the creek. Um - - Mr. Frederick also testified that there was no doubt that this 1990 Deed (unintelligible) that it went across the creek to the west bank that that’s unambiguous that the property was going across Little Antietam Creek. It wasn’t running in the middle. It was actually crossing the creek.

And our Plaintiff’s Exhibit 16 is the next deed related to the Estes property. It’s from July 1993, that was a conveyance from Richard Jolles to the Hopes, to Maxwell and Yvonne Hope. Again, it’s that same description where it talks about crossing Little Antietam Creek. Fence along the west side of said creek along the lines of Harry Hutzell. Um, it includes calls to a fence post, fence line, the blazed tree and it discusses fence along or with said creek and then fence leaving said creek. And Mr. Frederick, again, testified that that is clear to him that the property went to the west side of that creek.

And as I mentioned earlier, the conveyance in March of 2013, from the Hopes to Mr. Estes, which is our Exhibit 3 to our Motion for Summary Judgment. That references plat 9186, which is consistent with what has been described in the 1990, 1993 plats and conveyances or plats and deeds.

And, Your Honor, Exhibit 2 to the Motion for Summary Judgment, that’s that plat 9186, that also includes a list of the different trees and other vegetation that were found at that time back in 2006 on the property, on the Estes property.

And in 2018, which is our Exhibit 5 to the Motion for Summary Judgment, which I believed I already mentioned, the deed for the Holder property or the Uncle Eddies property in liber 5726. That’s a deed between the Hutzells and Uncle Eddies conveying the land to Uncle Eddies. That says the description of the land to be conveyed was in accordance with a survey in April of 2018 by Mr. Frederick. So that is what would have been recorded in the land records when that conveyance to Uncle Eddies back in 2018.

And, Your Honor, in addition to the record title here

Mr. Estes also has a claim to title, valid title, through adverse possession. Here the possession of the property at issue was actual open, notorious and exclusive. It was continuous or uninterrupted for the twenty year period. And it was a hostile underclaim of title or ownership. The possession just needs to be visible and notorious such that a true owner may be presumed to have notice of it though actual notice is not required. And continuous that can be just, as you know, by one property owner or it can be tacking on multiple property owners, which is the case here.

And, here, Your Honor, the Hopes, the predecessors in title to Mr. Estes, our position is that possession ran from at least to 1993 when they gained title of the property until 2018 when Mr. Holder arrives, which is a period of twenty-five years, much longer than the twenty years that we need for adverse possession. So, in 2013, that twenty year period, the Plaintiff already had a fee simple title. There was nothing that Mr. Holder could interrupt as to adverse possession when he came in 2018. Here, the possession was about permission was done in a manner consistent with normal use of one’s property.

As I had already mentioned back in 1990, Mr. Frederick when he was doing as survey of the Estes property, he found the blazed tree post. He found a fence on multiple occasions along that boundary line indicating that that possession was open, it was hostile and that it was well known. Mr. Estes included in his Affidavit again as we said what Mr. Hope has told him about where the property was indicating that the Hopes were clear that that line up and till the fence was part of their property that that was property that they were in fact using. Mr. Holder had pointed out in his opposition that there was a fire at one point in the mid 2000’s of the Hopes property. We’ve included case law in our reply, which I won’t repeat here. But that makes clear that continuous does not need to be all the time. We’ve included a case it’s *Stuart vs. Johnson*, 181 Md. 145, 1942 case from the Court of Appeals where an adverse possession was found even though the owner had moved away or the person seeking adverse possession had moved away for a period of several years due to a fire. The Court still found that that was continuous possession sufficient for the twenty years.

Your Honor, as to the burden of proof as to adverse possession, Mr. Estes does have the burden of showing open and continuous use for the statutory period. But then the burden shifts to landowner to show that the use was permissive. Defendants have not met any sort of burden showing that that was the case here.

And, Your Honor, for those reasons as to Quiet Title, it’s Plaintiff’s position that he’s entitled to summary judgment because he has shown Quiet Title both through adverse possession as well as record title.

As to Count 6, Mr. Estes claim for ejectment, for the very same reasons, if that’s what plead as an alternative if the Court were to determine that the Defendants, that Mr. Holder or Ms. Holder or Uncle Eddies is in actual or construction possession of some parts of the Estes property. We have shown that that property both through record title and adverse possession that that should actually that the is Mr. Estes’ property and that the Defendant should be ejected from that property. And again, that’s for the same reasons as we’ve already argued as to Quiet Title.

And, Your Honor, if I may, I was going to move on to trespass, unless Your Honor has any questions?

THE COURT: No, go ahead.

MS. PRAWDE: Okay. And I know that I already sort of briefly alluded to and as Your Honor had previously asked related to trespass, it’s our position that Mr. Holder has not disputed that a trespass occurred to the extent that the Court finds that the property at issue is Mr. Estes’ property. We don’t think that there is any sort of factual dispute that would prevent summary judgment being issued in Mr. Estes favor here. Um, again, we’ve included photos, we’ve included a video. We’ve also included the Affidavit from Mr. Estes as well as emails and text messages in which Mr. Holder acknowledges that he has come on to the property and he has cut down trees, vegetation, shrubs on the property, brush on the property. When Mr. Estes and Mr. Holder met in December of 2019, this is in Mr. Estes Affidavit, Mr. Holder acknowledged that he or his agents have removed plants, trees, underbrush and other vegetation. And that includes walnut trees, box elder seedlings and trees, wild rose bushes, spice bushes, and sycamore seedlings from the Estes property.

In January of 2020, Mr. Holder texted Plaintiff that he had removed the fence, which had formed part of the shared boundary. Mr. Holder wrote that he had looked across the street, saw the nice creek bank. He thought it was common courtesy to come clean up the mess on Mr. Estes side as well. And as I previously argued there was nothing in Mr. Holder’s opposition nor he didn’t include any sort of affidavit or anything under oath as the Rule requires. Disputing that such a trespass or he was on an area of land that would be considered Mr. Estes property or that any of these trees or vegetation or brush, shrubs, any of that, was cut down or otherwise destroyed.

And for those reasons, we think that summary judgment should be entered in Mr. Estes favor as to trespass. We do have a claim against Uncle Eddies as well for trespass to the extent that Mr. Holder is holding himself out as an agent or a parent agent of Uncle Eddies. We've seen evidence in the record including emails to the Maryland Department of Environment where he makes reference to being the manager of Uncle Eddies. So, it's our position that Uncle Eddies also liable for the trespass by Mr. Holder from it's property on (unintelligible) property onto Mr. Estes' property.

And then as to Plaintiff's claim account to violation of 5409 of the Natural Resources Article, for similar reasons we believe that summary judgment should be entered for the Plaintiff and against Mr. Holder and Uncle Eddies. That provision provides a right-of-action, a civil right-of-action, for a party that has been aggrieved by another parties impermissible cutting, burning or injuring of merchantable trees or timber. And I previously listed the types of trees that were cut down. I've also referenced the 2006 survey, 9186, which also includes reference to the types of trees and vegetation that were on the Estes property at least back then. Um, and we've included the Affidavit from Mr. Estes as well as photographs and text messages from Mr.

Holder referencing cutting down trees on the Estes' property. It's well established that a landowner is generally limited to cutting back growth to the property line. He may not enter the adjoining landowner's property to chop down a tree or cut back growth without his neighbor's consent. That's in *Melnick vs. C.S.*X. Corp., 312 Md. 511, a 1988 case. There was no permission granted for Mr. Holder to come onto Mr. Estes' property to tear down or destroy these trees in any way. The 5409 specifically provides that any person, his aiders, his abettors, and counselors who willfully, negligently, recklessly, wrongfully or maliciously enters upon lands or premises of another without the permission of the owner.

So, under that provision we also believe that Uncle Eddies should be liable under that provision for either aiding and abetting or providing the property and allowing Mr. Holder to cross the property to gain access to Mr. Estes' property for its benefit. Or if our possession that Uncle Eddies was negligent or reckless in allowing Mr. Estes, I'm sorry, in allowing Mr. Holder to repeatedly cross onto Mr. Estes property and to tear down and destroy his trees, which again, there would be knowledge that this was occurring.

And, finally, Your Honor, the last claim is aiding and abetting. And that is just we’re seeking a Motion for Summary Judgment just as to Uncle Eddies as to the claim for aiding and abetting and for the very same reasons that I just said as to trespass and as to the violation of 5409.

And, Your Honor, for those reasons, we believe that summary judgment should be entered in Plaintiff’s favor. Thank you for your time.

THE COURT: Ms. Prawde, would you agree that even if I were to think about summary judgment on trespass or the Natural Resource Article the value of damages is not something I can decide on summary judgment.

MS. PRAWDE: Your Honor, that’s correct.

THE COURT: Okay.

MS. PRAWDE: And it’s our position that, you know, we believe there’s not dispute of facts here that summary judgment can and should be entered at this time as to those claims. But that there would still need to be a trial on damages to make that determination, that’s correct.

THE COURT: Okay, thank you. I think the primary Defendant is the neighboring landowner, that’s Uncle Eddies. Are you ready to argue?

MR. KLINE: Yes, Judge.

THE COURT: Okay. Go ahead.

MR. KLINE: Thank you. Obviously before I start, I'll just incorporate in my argument the opposition that was filed on behalf of Uncle Eddies, that the Court should have in its file. It appears it was filed on July 4, that Monday. With respect to counsel's arguments, it seems to me that in order to get past Counts, well, get through trespass, the Natural Resource count, the private nuisance count and the ejectment count would all require an agency argument as counsel just alluded to at the very end of her argument. And in each of those cases as she indicates she is concluding that Uncle Eddies, and she brings in a new count, Uncle Eddies is somehow negligent in not harnessing, corralling, supervising, managing Mr. Holder in his actions on behalf of Uncle Eddies as a manager. To that extent, as far as I can see, and I'm sure if I'm wrong counsel and I'm sure the Court will give her a chance to rebut anything or speak with her again, I don't see anything in the motion indicating any agency between Justin Holder and Uncle Eddies. In fact, the Affidavit doesn't indicate anything between Justin Holder and Uncle Eddies as far as an agency relationship. The bulk of the allegations are, Justin Holder did this. Justin Holder sent emails. He sent texts. He showed up. He spoke with Mr. Estes. But none of those indicate or I did not see anything that indicated that Justin Holder wrote on behalf of Uncle Eddies or that wasn't even lip service in any email, text or otherwise provided that he was acting on behalf of Uncle Eddies. So, at this point, whether or not there's an agency between Justin Holder and Uncle Eddies, I think is a material fact and genuine issue as we sit here or stand here today or appear here today before the Court.

With respect to obviously she has withdrawn, I believe, the private nuisance. Am I correct, counsel, Count 3, Private Nuisance as to Uncle Eddies?

MS. PRAWDE: Your Honor, we were seeking that, it's not in our pleadings but that's correct. We're not seeking summary judgment as to nuisance.

MR. KLINE: Okay. I just wanted to make sure before I leave out something and don't address it. So, as far as the agency that would be Counts 1 for Trespass, Count 2 for Natural Resources, Aiding and Abetting, which is Count 4 and Count 6, which would be ejectment. And that would leave then the Quiet Title issue and the Court is well aware as we appeared before Your Honor a number of months ago in Case 371, this comes down to, as I see it or interpreted in the Quiet Title issue, whether or not the lines that are drawn or the lines in the deeds or the various plats that counsel has generated are actual correct and should be relied upon. And as we were here last time and the Court, I’m not going to belabor the point, we had a number of different issues where the lines did not match and there was a disagreement in the lines. And with respect to Plaintiff’s Motion for Summary Judgment pages 8, 9 and 10 go into different people that had testified that were parts of depositions so counsel, Plaintiff’s counsel indicates Mr. Frederick indicated (a) Mr. Nagle indicated (b) and Mr. Dowling expert witness opining about Mr. Nagle’s work indicated (c).

And I also put in my opposition they call it the disputed property almost from the outset. It seems to be putting the cart - - It’s disputed for a reason and that’s because at least Mr. Frederick, Mr. Nagle and Mr. Dowling can’t seem to get on the same page. The fact the deeds go back a hundred years as we learned in the last trial I don’t think is controlling here because there are, as we learned in the last trial different ways, and this is why we need an expert to come in, different ways to determine where the calls, the distances, what have you go from. There were stones. There were, there was a tree. And in this case Mr. Dowling opining about Mr. Nagle indicates that his line is different from his. And I appreciate counsel for putting it in. It puts it rather straight forward that while the deeds may match the lines do not depending upon how it's drawn.

So, with respect to, with respect to the Quiet Title, I believe we would have a material fact issue as to how the lines should be drawn that would impact whether or not Quiet Title is appropriate (unintelligible) It may be that Uncle Eddies has some, has none, or has more. I don't know but - - it we just - - we don't have three experts agreeing on the lines. And they're being drawn differently and Mr. Dowling, who is one of the experts, indicated in his Affidavit where the difference would be.

Lastly, and move on, I'm not going to apologize for brevity but the Plaintiff here is using tacking to get past the twenty years. He purchased it in 2013. That's his paragraph 18 or Exhibit 3 to Plaintiff's motion. So, as far as the twenty years as to him, as to Mr. Estes because he's just not qualified because he doesn't have the twenty years. We're a tad short. So, the only way that he gets to the twenty years is by tacking through the prior owner, the Hopes, which go back to '93. And I agree with counsel if this Court were to agree that the tacking is appropriate with Mr. and Mrs. Hope transferring the property to Mr. Estes we can certainly understand that. We would disagree but the Affidavits that's attached and the information that's contained in the Motion for Summary Judgment, while Ms. Hope, I'm sorry, Mr. Estes' Affidavit indicates in paragraph 19 on page 3, "Maxwell Hope told me that the Estes property included property on both sides of Little Antietam Creek and specifically pointed out that the disputed property was part of the Estes property." I appreciate the statement but it doesn't say where the line is. And I would presume that the Hopes - - And I don't know if Your Honor has had a chance to go to this property. I have had a chance to go to this property and look at it. It is, it is not a normal - - It is in the country that two developments as the Court is well aware was put down in a field over a ravine with a creek running through it. And with little homes that if you put in GPS, GPS has no idea where you're at because I did to find Mrs. Holder's property. I understand Mr. and Mrs. Hope saying, yeah, that over there by the creek that's my property. There was no one else there or we don't know because the affidavit in paragraph 19 is only, they told us that's ours. And I understand that because if you own a substantial amount of property more than a couple acres you tell your neighbors, yeah, I own back, you know, to that tree line. Unlike the other case where there was a dilapidated fence there is no fence here. It's I own over there and that's mine and you get all of that. And I don't think that that should be sufficient at this point without a follow-up affidavit from the Hopes or what they have or what they did to meet the other elements of adverse possession in tacking on would pass the standard here today for review for Motion for Summary Judgment. I'm not saying they can't be successful at trial but that's not the purpose. The purpose is here we're not going to have a trial on this issue as to Uncle Eddies as to Quiet Title and Uncle Eddies, the Quiet Title issue is one for, in my opinion, a law decision but we need to hear testimony to reach that decision. We don't need to know whether Justin Holder is an agent or not an agent. It's just they bought this land. And I don't think we have the necessary - - I'm not saying he can't be supplemented. I'm not trying to cut off counsel. You know, supplement whatever you like. But with what's in the motion and that one paragraph should not suffice to tap on to Mr. Estes rights from 2013 forward.

THE COURT: Especially at the summary judgment stage.

MR. KLINE: Especially summary judgment. I'm not saying they're not successful later. But for the purposes of today that, that paragraph alone with pages 8, 9, and 10, which indicated discrepancy between three real estate surveyors, you know, title company people who are in the profession, who disagree, is not enough to pass here today.

And, as far as the other issues, and perhaps counsel can point me to something, I don't believe there is any agency language that would support a finding that Justin Holder acted as an agent for Uncle Eddies.

THE COURT: On summary judgment.

MR. KLINE: On summary judgment. And so, for those reasons, and I'll stand down, for those reasons I think --

THE COURT: May I ask a few questions?

MR. KLINE: Certainly.

THE COURT: Okay, I want to understand the distinction a little bit between Frederick and Nagle and then Dowling. And I know Mr. Holder can probably explain it to me as well. I'll ask him too.

MR. KLINE: He would probably do a heck of a lot job than I will but I will try, Your Honor.

THE COURT: Okay. I understand.

MR. KLINE: My understanding - - I'm sorry.

THE COURT: If we can call it the Fred Frederick line that is the line shown on plat 10955, which Ms. Prawde showed us on her screen. Okay.

MR. KLINE: Yes.

THE COURT: In my mind, that's the Fred Frederick line. Okay. The George Nagle line in my mind comes from a survey from Fox and Associates in 2021, because I think Nagle works for Fox.

MR. KLINE: That's my understanding as well. But if I'm wrong, Mr. Holder please chime in.

THE COURT: Are you - - Okay. Is there a suggestion that the Fred Frederick line and the George Nagle line on those two separate plats, Fred's plat, I call him Fred. Mr. Frederick's plat is a recorded plat. Mr. Nagle's plat I don't know was ever recorded but it's signed by him. Are those two lines different because they look really, really similar? And Mr. Holder can probably tell me. Mr. Estes can probably tell me. But if they're different, how different are they, do we know?

MR. KLINE: I do not know.

THE COURT: Okay.

MR. KLINE: Honestly to the Court. And I believe Mr. Dowling would be best, could explain to the Court or could provide guidance to the Court best how he reads it.

THE COURT: Okay.

MR. KLINE: In looking at both Frederick's plat, line, and Nagle's line.

THE COURT: Okay.

MR. KLINE: And that's reflected on page - -

THE COURT: In Plaintiff's Motion for Summary Judgment.

MR. KLINE: I'm looking specif - - I'm sorry, Your Honor. I didn't hear your comment.

THE COURT: It's reflected in the Motion for Summary Judgment - -

MR. KLINE: Right.

THE COURT: - - pages 8, 9 and 10 where counsel talks about John Dowling.

MR. KLINE: Right, so I'm looking at page 9 towards the bottom of the top paragraph and it said and I believe this is - - It says Nagle did not plat the calls contained in the deed or the description of the deed. Instead, he found a stone, made one line to the middle of the creek and then made up new calls down the middle of the creek. The blue that Dowling plotted is where the calls in Eddies would be if Nagle had plotted the deed lines.

THE COURT: Okay.

MR. KLINE: And that's just one part of three pages.

THE COURT: Yes.

MR. KLINE: But I'm just saying and I appreciate, and again, I appreciate counsel putting the Motion for Summary Judgment rather than you know everyone having to dig it out. But it's clear that despite what the deeds are and despite the one hundred year history of these deeds, what we found and what we experienced at the last trial is if they're not matching up apples to apples and drawing the lines on the deeds, they're different.

THE COURT: Fair. How does Uncle Eddies deal with plat 10955 where Justin Holder signed, apparently as Manager? The word Manager follows his signature, that this is a correct plotting of Uncle Eddies boundary?

MR. KLINE: Are referring to the answer, Your Honor, or are you referring - -

THE COURT: No, I'm referring to plat number 10955.

MR. KLINE: Oh, I'm sorry.

THE COURT: A plat recorded in Washington County, which I think Ms. Prawde indicated to me was part of a deed when Mrs. Holder and Uncle Eddies reconfigured the properties. Looking at that plat, it looked like there was to be the sewer easement that we discussed in the last case and the signature is Justin Holder as Manger, he wrote the word Manager, indicating that these, they are requesting approval that these be the property lines and that's the Fred Frederick line. How does Uncle Eddies deal with the fact that there is a plat filed by Holder as Manager that says the Fred Frederick line is the correct line?

MR. KLINE: And I'm going to suggest that when that was signed they believed that it was the mark. Subsequent, they found out it was not the line and as we have ourselves today in this fine line. I understand the Court's position. You stopped, you - -

THE COURT: I'm sorry, I'm looking at the ceiling because nobody could see me but. You're saying that a property owner seeking approval from town government can file a plat, sign their name that this is my line on behalf of Uncle Eddies and then years later can come back and say, whoops, I got it wrong, that's not my line and therefore I want the Court to change my line. Why?

MR. KLINE: Yes, and I'm - - And I'll use as an example. As the Court pointed out in the last trial that the subdivision occurred without the approval of the town, and they went through the whole process, without having the necessary approvals for that subdivision. So, in this case there was reliance because he signed off and he's relying upon somebody else's work. He's not by trade a surveyor. When I say he I'm referring to Mr. Holder.

THE COURT: Right.

MR. KLINE: And it's only afterwards that he determines the line so it's a mistake that he made and that would be the reason why he could come back because it was a good faith mistake at the time that he signed off believing that Fred Frederick's line was correct only to determine later that it was not correct and therefore it excuses his mistake that he made on the, on the signature because he was under the belief that it was (a) and it turned out to be (b).

THE COURT: Okay.

MR. KLINE: Certainly, I mean the mistake isn't - - it wasn't (unintelligible). Although it's not been argued it wasn't a fraudulent mistake where he was trying to land grab something. He was referring up to something that had been filed previously that he felt was correct. And only later determined to be, only later determined to be called into question by subsequent surveyors and plotters and title company people.

THE COURT: Well, and I think what I need to hear from Mr. Holder is this Frederick Nagle distinction.

MR. KLINE: And that's fine.

THE COURT: Did Nagle come in and change the Fred Frederick line or because they look really the same to me quite frankly but I'm looking at 8x11 plats.

MR. KLINE: Understood, Your Honor.

THE COURT: Okay.

MR. KLINE: And as we found out last time it turned out to be maybe fifteen, I don't want to again minimize fifteen feet but, you know.

THE COURT: I hear you.

MR. KLINE: It could be on an 8 ½ x 11 on a scale is one inch equals fifty feet. You know, an 1/8th of an inch could have been 8 feet. And I'm using that as an example. I don't know what the scale is.

THE COURT: Very good.

MR. KLINE: Anything else, Your Honor.

THE COURT: No, sir.

MR. KLINE: Thank you.

THE COURT: Thank you. Ms. Peeples would you grant me leave to have Mr. Holder argue? Would that be okay with you?

MS. PEEPLES: That's fine. I would have two small things I need to say and I'll just wait until the end, Your Honor. That's fine.

THE COURT: Why don't we do them now if they're - - Go ahead.

MS. PEEPLES: I was going to say with respect to and I'm a little confused as to which count remain to Ms. Holder to I'm doing this in an abundance of caution and if it doesn't apply to me then so be it. But, for example, this also goes a little bit to the letter that I wrote you. Specifically, the 5409 Natural Resources Article there's a key word in there from called merchantable and I believe that - - I'm sorry?

THE COURT: I missed what the key word was.

MS. PEEPLES: The key word in the 5409 Natural

Resources Article the key term that I want the Court to focus on is merchantable.

THE COURT: Okay.

MS. PEEPLES: If you look at the term merchantable. And I think this goes a little bit to the problem that I identified to the Court in the letter, which I know we'll discuss after this but, merchantable timber is not just the cutting of any trees. It's the cutting of trees that can, you know, used to produce logs or other things and I think that the Plaintiffs in this case have an expert problem at this stage of the game to establish whether or not merchantable timber was actually cut from the property. So, by its own definition and what they're trying to prove that would create a material question of fact where summary judgment should not be granted pursuant to 5409.

Secondly, the thing that I wanted to mention to the Court was I know that Quiet Title was referenced in connection with Deena Holder. If you look at the facts as alleged in the complaint there's never been any allegation that Deena Holder has tried to claim an interest in Mr. Estes' property, so, to the extent that the Court would rule on summary judgment on that issue or if the Court is so inclined, I don't think it should be proper to rule against Mrs. Holder since she wasn't mentioned to have any facts that would give rise to any dispute. So, to the extent that that provision of the Complaint wouldn’t apply to her I just wanted to clarify that with the Court.

THE COURT: Yes, I hear you and I think Mrs. Holder’s conclusion in this case is interesting and I wonder whether she remains properly included. Now, to be fair to the Plaintiff I don’t think any of us understood Uncle Eddies and what Mrs. Holder’s relationship to Uncle Eddies might have been until we had that last trial on the other case.

MS. PEEPLES: Correct.

THE COURT: And, so I can’t blame Mr. Estes. I can’t blame Ms. Prawde and her firm but I think it’s an interesting thing whether Mrs. Holder is a proper party ultimately as it relates to each count. But, again, that’s not a failure on Mr. Estes part when you brought this original action.

MS. PEEPLES: I’m not suggesting it, Your Honor. I just - - I understand when things were started with the litigation. You know, I like Mr. Estes, I respect what he’s saying but now that we’re here following the close of discovery I think we’re in a very different situation.

THE COURT: Yes, okay. Okay. Mr. Holder, then. Anything else Ms. Peeples?

MS. PEEPLES: No, Your Honor, I just wanted to point out the 5409 argument.

THE COURT: Got it.

MS. PEEPLES: And I just wanted to point out the relationship in terms of the Quiet Title.

THE COURT: Okay.

MR. HOLDER: Good morning, Your Honor, thank you for your time.

THE COURT: Hi, Mr. Holder.

MR. HOLDER: I'm just going to start briefly in addressing Plaintiff's argument that they don't believe that there was a proper Affidavit under oath in response disputing certain factual allegations they made. I believe that pages 5 and 6 of my Opposition I filed it the Rule 2501. I went through Mr. Estes Affidavit. I picked out the individual facts that were disputed. I just, I just uses Mr. Estes or Mr. Estes experts or Mr. Estes own deposition testimony that dispute themselves and - - Do I have the ability to share my screen, Your Honor? Would the Court allow me?

THE COURT: Yes. Let's do this. Can we take a five minute break?

MR. HOLDER: Yes, Your Honor. Yes, sir.

THE COURT: Okay, let's take a five minute break. I think you probably don't need to turn your computer off or anything. Let’s just take five minutes but be careful what you discuss because you’re still on camera.

(Whereupon at 10:46 a.m. Court was in recess and resumed at 10:49 a.m., and the following occurred in open Court:)

THE COURT: Okay. We’re back then. Estes versus Holder, C-21-CV-20-430. Mr. Holder, are you ready to go?

MR. HOLDER: Yes, I am, Your Honor. Thank you.

THE COURT: Okay. Go ahead, sir.

MR. HOLDER: So, they included Rule 2501 and I see it does say that affidavits have to be supported by personal knowledge or some type of document under oath. And just for example, Mr. Estes Exhibit, I believe it’s his Exhibit 7. Can we see the screen there?

THE COURT: It’s coming. It takes about a minute.

MR. HOLDER: Okay.

THE COURT: Alright, there it is. I’m looking what looks like to be a text.

MR. HOLDER: Yeah, text message he included in Exhibit 7. It says, “I am not at all upset. I am not at all interested in arguing over a swamp.” And then the third sentence, “There are not any trees being cleared.”

THE COURT: Is that you talking or him talking?

MR. HOLDER: That was the text message that Mr. Estes Affidavit said was me talking to him in his Affidavit.

THE COURT: Okay. Okay.

MR. HOLDER: So, I did bring up certain documents such as the deposition testimony of John Dowling at page 4 in the Opposition opining about Fred Frederick's deviation in the title line. And Mr. Estes actually in his first Amended Complaint at paragraph 20 acknowledged that FSA had acknowledged a minor error in describing the line of the property. And that was under oath as well. I'll bring that up.

THE COURT: Hang on a second. Didn't Fred Frederick send you an email that says no, Mr. Holder. I didn't say that I made an error. I told you why I found the line where I did.

MR. HOLDER: I don't believe I have that email from Mr. Frederick. And I didn't see that email as part of the record certainly.

THE COURT: Email from Fred Frederick to Justin Holder docketed in this court on February 20, 2022. I don't know whose motion it was. "Dear Justin. Stop. Your interpretation of mistakes on FSA's part are totally wrong. I told you before and I will say it one more time." Now, when I printed that out it all blacked out on me because somebody had highlighted what he was saying. "I know you don't want to listen to me or to reason so we need to stop." So.

MR. HOLDER: And that's - - Sorry.

THE COURT: When you tell me that Fred Frederick admits that he's wrong please understand I'm going to take that with a grain of salt because I know he wrote a letter where he explained why he put the line where he put the line but he's not admitting that he's wrong, he's just explaining why he put the line where he put the line. Okay.

MR. HOLDER: This is Mr. Estes first Amended Complaint at paragraph 20. "While FSA acknowledges that its initial plat of the Holder property contained a minor error in locating the eastern boundary of the Holder property it also acknowledged that even if the initial plat of the Holder property was correct the shared boundary line would still be on the western side of the Little Antietam Creek."

Further, when this property dispute arose Mr. Frederick did write a letter and I did include an Affidavit by way of my original Motion for Summary Judgment on Count 6 and that summary judgment did have an Affidavit and I also included that and incorporated that into my opposition. And this is Exhibit 1 of that. I labeled it as Exhibit A-1 of this Opposition for clarity and this is Mr. Frederick's letter and Mr. Estes Exhibit 12 he included the bottom of his Confirmatory Deed also references this deed at liber 960 folio 502 as being originally establishing his boundary line. And where I'm going with this is where I think the Court wants to go with this is that it's not so much a dispute of material fact that we're going to bring to the Court. I don't know there's any additional information as Mr. Estes and his counsel opined that we're really going to bring to the Court during trial over this boundary. Both parties acknowledged in their expert John Dowling that these calls were established hundreds of years ago by a deed recorded at liber NN and folio 520 of the land records.

THE COURT: Right.

MR. HOLDER: And the Court can make that determination as a matter of law, save us days of trial just by reviewing this deed at NN 520 and saying, okay, here's the line. This is what I interpret the line to be as Mr. Nagle's says and it calls to the creek and natural monument. Or it's Mr. Estes and Frederick, um, opined that the courses and distances should be taken above a call to a natural monument. And I included it - -

THE COURT: Hang on. Let me stop you there. You're getting right to the, what I'm just a little bit confused by and I want to understand.

MR. HOLDER: Okay.

THE COURT: So, deed NN 520 says, to Little Antietam

Creek then down said creek the nine following courses and it lists a bunch of courses. Okay. As part of your presentation in this case, are you taking the position that one of the lines I could find is that the line actually stays in the creek all the way around?

MR. HOLDER: Yes, Your Honor. That would actually be the universal rule from the Bowie court - -

THE COURT: I gotcha. I gotcha. Alternatively, what I think Mr. Frederick says, I think what Mr. Nagle says and maybe even what Mr. Dowling says I don't know, but that when the language then says the nine following courses and those courses at some point go out of the creek to the west bank that that's a second possible line. Is that correct?

MR. HOLDER: That being - - That would be the Plaintiff's position.

THE COURT: Okay. When I look at Fred Frederick's line from plat 1095 and I look at Mr. Nagle's line on a boundary survey he did for Uncle Eddies are those two lines the same?

MR. HOLDER: I believe what Mr. Nagle shows in the crosshatched area is on the west side is what you've been referring to as the Frederick line.

THE COURT: Okay.

MR. HOLDER: And then he shows the center of the creek. And if you notice there's a thin spot that where those two lines come together and they're sort of two very separate areas of overlap.

THE COURT: Yes.

MR. HOLDER: That spot is that stake that Estes put in his 0311, that stake in the middle of the creek that Fred Frederick drove in.

THE COURT: Okay. So, the Nagle's line stays in the creek?

MR. HOLDER: Nagle's goes in the creek and stays in the creek the whole way around the peninsula.

THE COURT: Do his lines match the 520 deed?

MR. HOLDER: Yes, because the 520 deed calls to the creek as to a natural monument.

THE COURT: No, no, no. When it goes the next nine courses in the 520 deed did Nagle plat the next nine courses inside the creek?

MR. HOLDER: No, he totally disregarded the courses and distances and just drew a line at the center of the creek from what I can tell.

THE COURT: Okay. So, Nagle - - Nagle disregards the nine courses. He says because the deed 520 says to Little Antietam Creek then down said creek, he then disregards the next nine courses and he just stays in the creek all the way?

MR. HOLDER: Yes. That's my understanding after his deposition, Yes, Your Honor.

THE COURT: Okay. And then what does Mr. Dowling say? Because I have a drawing by Dowling, you know, where he drew in blue and he drew in red and I'm just not sure exactly what Mr. Dowling is saying with this drawing. Do you know which one I'm talking about?

MR. HOLDER: Yeah, Mr. Dowling - - He has like three if's in that Affidavit.

THE COURT: Okay.

MR. HOLDER: And he's saying if Mr. Nagle was trying to draw the courses and distances and he just sort of lines up this - - Can you see my screen there, Your Honor?

THE COURT: Yes, I can.

MR. HOLDER: So, this line here that I overlaid, this black line.

THE COURT: Yes.

MR. HOLDER: Where Dowling drew original and in 520 courses and distances, he just sort of lines that up to the line that Nagle draws from the stone going down but if you notice it's off at 4 degrees and it's sort of a perversion because it sends the railroad right-of-way to Stonecrest and it puts the peninsula over into almost like up towards Main Street of Keedysville. It's very, it’s very (unintelligible) it would really create some other boundary problems. But he’s just saying if you just want to go over and lay lines this is what I can do. I don’t think Mr. Dowling is truly going to come to Court and, you know, opine that that’s the boundary line. But, you know, I might be surprised so. I’m not going to put words - -

THE COURT: Who is calling Mr. Dowling as an expert?

MR. HOLDER: I believe he’s Mr. Estes rebuttal expert. But with Mr. Estes not calling Mr. Frederick as an expert he’s I guess going to have to rely on Mr. Dowling. I’m still a little confused about that after discovery. I’ve been trying to get some answers there.

THE COURT: Okay. So, that black line that I’m looking at on your Opposition to Motion for Summary Judgment, I forget what page that’s on, did you draw that line or did Dowling draw that line?

MR. HOLDER: I overlayed Mr. Dowling’s line that he drew and Estes produced as number 1478 and I overlayed Estes __60 and I lined up this point right here which is that stake in the creek and these two lines here that match and then here’s where Mr. Frederick deviated and when to the fence line.

THE COURT: Yes. Mr. Frederick is the blue line.

MR. HOLDER: Mr. Frederick is the blue line, that’s correct, Your Honor.

THE COURT: Okay.

MR. HOLDER: Mr. Dowling opining about it here, he says going back to the deviation there is a deviation that the third line up from the creek so we have two lines here. We have line 1, line 2, and then here's the third line. The nn 520 deed has two lines, right here. Frederick has one to a fence post another fence post to blazed tree over to an iron pin.

THE COURT: Okay.

MRL HOLDER: That would be the land that Mr. Estes is saying is damaged, as been (unintelligible) here the fence that was removed in this case. And this is where Mr. Estes would have to prove that his predecessor came across the creek and did things, you know, openly and notoriously to possess this. Mr. Estes claims he has personal knowledge of it but I did bring two of Mr. Estes depositions where he said he was living in Maine in a tent until 1998 to 2000. So, it's a little hard for me to imagine what personal knowledge he would have of the Hope's open and notorious possession from, you know, a tent in Maine for five or six years there.

THE COURT: Okay.

MR. HOLDER: Um, in this Opposition. And Mr. Frederick's letter also states that, you know, he held a line of possession that there's no dispute between these southern two lines and that he had held a line of possession through this northern area of the dispute. In Mr. Frederick's deposition he said the first time he was on the property it was with me in 2017 so what personal knowledge Mr. Frederick would be able to produce relevant to this, I'm not sure that he would be able to opine about it. We don't have any witnesses other than probably the Hutzells, Richard Jolles, Tommy Remsburg, some of the older property owners that would come in. None of those are on Mr. Estes list. They're on my list of witnesses, which I'm going to bring up how the Plaintiff's discussing - - And I'm sorry for jumping around.

THE COURT: I'm okay.

MR. HOLDER: Why I can defend. There's three different standards here because we're talking about a trespass claim, we're talking about an ejectment claim and we're talking about a Quiet Title claim. In a Quiet Title the burden of proof for the title it is different because somebody that's in possession of property shouldn't be disturbed. But in a claim for ejectment, Mr. Estes can't recover off the weaknesses of the Defendant. He must weigh on the strength of his own title or claim to right. And then in his suit for trespass, I can defend somebody else’s title. I can defend using a different title. There’s a completely different standard and that standard is listed in Rose and (unintelligible) a Frederick case from 1975. And I don’t actually have with me but I’ve cited it in some papers. So, for Mr. Estes to come in and file this Motion for Summary Judgment saying there’s no dispute of the Frederick line. You know, when I signed the plat as manager for Uncle Eddies 10 55 I was being defrauded by Mr. Frederick. He didn’t want to disturb his property lines. I didn’t understand that. I’m not going to testify about our conversations now. I’ll do that at trial if we need to or at an appropriate time and an appropriate place unless Your Honor would like me to and I’m willing to do that but I was under the impression that we bought parcel 414 from Brian Curtis Smith and that corrected our problem with the creek bank. I know Mr. Frederick wanted his survey to fit in hand and glove with Mr. Estes in the work he did. I was under the impression Mr. Estes would not be coming across the creek. That it was a public creek and if you notice that yellow highlighted line that Mr. Estes says I’m trespassing in, that’s right in the middle of Little Antietam Creek, Your Honor. The video he shows I’m in hip waders walking probably waist deep at times up through the Little Antietam Creek and at the end I said this is the Holder property on this side this is the Estes property on that side. So, the exhibits that Mr. Estes supplies in his own argument for summary judgment they're dispositive of his claims but they also show to the Court that really we're not going to bring any facts to the fact finder here at trial. And in judicial economy, the Court can just look at the plain language of the deed and in NN520 and Mr. Estes really in his interrogatory answers does a good job of explaining the dispute here. If I can find it. I'm sorry for flipping around here.

THE COURT: I'm okay.

MR. HOLDER: I just want to go back to it here. I think it's - - Here it is in my argument. Can you see - - Can you see interrogatory number 24 well enough to read it or do I need to zoom in?

THE COURT: I can read it.

MR. HOLDER: And basically, he says instead of it calling to the creek that he saying that the courses and distances should prevail.

THE COURT: Okay.

MR. HOLDER: And, you know, the grounds and authorities I have here, you know, especially the universal rule in the Bowie court, which is construing

Brown v. Kennedy. If you read the *Bowie v. Western Maryland Railroad* case, you know, they actually discuss in there the justices that, you know, if we turn this over we're going to overturn two hundred years of boundary law and they're specifically construing the acts of 1862, Section 45. It said, you know, boundaries on now these navigable waters, these owners of navigable waters are now being given the same rights, the same exact rights with this statute as people bounding on non-navigable waters. And the (unintelligible) owners value of this property is his access to the water. And - -

THE COURT: Yes but hang on a second. Hang on a second, Mr. Holder. That general rule that when a call is to let's say the creek or a stream as the boundary of my property, right, the western boundary of my property, is the stream. I think what the *Bowie* case probably says what other case law says is I get the stream to the midpoint of the stream my neighbor has from the midpoint to the other side. But that's not what deed 520 says. The 520 says to the creek and then the following courses. So, in a deed that says to a physical thing like a creek but then down these following courses are you suggesting that it was appropriate for Mr. Nagle to ignore those courses? It just come out of the deed and that's what I should find as a matter of law that those things are extinguished and taken out of this deed? Is there case law that says I'm supposed to do that?

MR. HOLDER: Yes, I do have that case law here. And that's going to be up in the *Marquardt vs. Papenfuse.* Thus, to the extent that any conflict exist by reason of courses and distances descriptions in the absence of any evidence of the contrary that calls control, calls to monuments given precedence over courses and distance, *Zawatsky Construction v. Feldman Corporation*, *Dundalk Holding v. Easter*. *Dundalk Holding v. Easter* is that, you know, natural monuments always prevail over courses and distances where the courses and distances in a grant do not agree with the call the call will prevail and the courses and distances will be rejected. *Stewart v. May*. For other cases where early (unintelligible) bounding in or running with water courses. See *Thomas v. Godfrey*, *Chamberlaine v. Crawford*, *Digges v. Commes*.

(Unintelligible) And I have a really good case for you that's a local one, Your Honor. It's down in the southern part of Washington County and it's *Stottlemyer* and his wife verses Mr. *Kline*. It's 255 Md. 635 (1969), 259a 2950.

THE COURT: Give that to me again. 255?

MR. HOLDER: Md. 635.

THE COURT: Okay, that's good enough.

MR. HOLDER: And in that case you can go down to page 647 and you'll see in parenthesis where they're citing. That was a Antietam Works land patent and the grantors called to a stone four feet off the bank. And those were the app words that they're talking about in this universal rule that reserved that tell the grantee look, we're going to reserve four feet of this creek bank. We're taking your rights to the water. We're taking your rights to the accretion to the reliction. We're going to keep those to ourselves because we're reserving this four foot strip off the banks. And those are the app words that they used and the Court did find that in that case, you know, the Klines did, or I'm sorry, the Stottlemyers didn't have repairing rights and Mr. Frederick's partner J. Harold Seibert and that case actually reversed his opinion that the creek was the, was the boundary.

So, that case is really good for the alternative side that Mr. Estes is arguing with these stones on the bank, you now, because here in *Marquardt v. Papenfuse* both deed calls to the boundaries of creeks, i.e., in the banks of the shorelines of a creek. They're the same. As Mr. Nagle explained these stones are witnesses. You can't put a stone or a tree in a middle of a road. So, you put them to the side and that line would be extended but it stops. It stops at the center of the creek where the original grantor intended, you know, not to leave a sliver, so Mr. Estes can interfere with people's rights to the public waterway the Little Antietam Creek here, which is ultimately what this case is about. It's Mr. Estes wants to prevent access to the creek from my children and people playing in the creek so what's the value in real estate, location, location, location. Obviously if Mr. Estes can own a six inch sliver of creek bank he can interfere with that right because we don't have a right to cross his property to get into the creek. And that's why these rules exist so to change and to rule that this deed, you know, doesn't call to the creek and go up the center of the creek we would be overturning *Brown vs. Kennedy* in hundreds of years of boundary law and ultimately, you know, telling Mr. Estes he has a six inch sliver of creek bank that is shown here in this, this picture here if you look at the creek there's just very, a very small bank right here and then the rest Mr. Estes would have to adversely possess, you know, there's No Trespassing signs, those are all on the east side of the creek. This vision on notorious possession, I mean, just to go back to that, the cases that he cited about didn't not having to be continuous, I would note that those are all right-of-way cases. They're not adverse possession of land cases and I would challenge the

Plaintiff or his counsel to find a case where adverse possession, there was a fire or interruption of years. And then secondly, Mr. Estes in his motion argues that it’s (unintelligible) that he can constructively possess. I would cite to the Wildlands exception that in the Wildland exceptions all use is presumed to be permissive wildland. And I don’t think it would be unreasonable to even ponder that the Hutzells who they saw somebody playing on the banks of the creek or somebody playing on Little Antietam Creek.

Your Honor, I don’t think that you’re going to say hey they’re trying to adversely possess my property. I think you’re going to say hey they’re enjoying the public water way, the water recreation. If you see somebody kayaking down your creek you don’t necessarily think they’re adversely possessing your property and I don’t think that that’s enough.

As I said in my grounds and authorities here the burden on Mr. Estes in evaluating a claim the pertinent inquiry is whether the Plaintiff has proved the elements based on the claimants object manifestation of adverse use rather on the claimant’s subjective intent. And that’s what Mr., I believe that’s what Mr. Kline was getting at in his argument is that, you know, you have guy and there’s two creeks on the property and says, hey

I own both sides of these creeks. Well, okay, but what have you done? What have you done to show you own them? What have you done to put the record of title on notice?

So, I think that the Court could decide, you know, Mr. Estes isn't going to be able to bring, you know, a genuine dispute of fact to the fact finder. With the discovery he's provided that he's adversely possessed his property, there's just, there's just nobody that can come in and testify to what Mr. Estes is claiming. Mr. Frederick wasn't there. Mr. Estes was in Maine. You know, he doesn't have any of the Hopes listed as a witness. Any Tommy Remsburg, the Hutzells aren't listed as Mr. Estes witness. To say that there was these notorious acts that he needs to prove his adverse possession of anything west of that and in 520 line even if he relies on the courses and distances that portion of the creek bank is still the same creek bank it's always been. The brush clearing was well to the west of those line just to clean up around the fence. The fence was never the boundary. Mr. Estes cites a case of *Costello verse Staubitz* and in that case there's a full analysis of how a fence could be used and it's clear that the fence was the record owner's fence that Mr. Estes predecessor didn't put the fence up around the peninsula and nobody puts a fence on the edge of a creek bank. It just gets washed away in a flood. It would be almost insane to even try to assume that you would put a fence on the edge of a creek bank.

So, there's not any dispute of fact that Mr. Estes can bring to Court on this adverse possession. He just simply is not going to be able to prove adverse possession in Court. And the dispute of the boundary is not a dispute of fact. It's just an interpretation of law in the deed of 1832 and how Your Honor wants to interpret that deed. Mr. Estes can't prove his case to the, you know, the land west of Little Antietam Creek, Counts 1 through 4 are basically moot.

So, I think that's, I think that's everything I had. I know I was sort of all over the place with it but I'll, you know, I'll incorporate my arguments there and my opposition and the papers I filed with it. And if Your Honor has any further questions I'd be happy to answer them.

THE COURT: No, I think you answered all my questions Mr. Holder. Thank you, sir.

MR. HOLDER: Okay, thank you, Your Honor.

THE COURT: Okay. Anything else then, Ms. Peeples? You went kind of quick originally. We'll come to your letter after a bit but is there anything more for the Summary Judgment?

MS. PEEPLES: No, Your Honor. Except to the extent, I'll stand on my pleadings.

THE COURT: Ms. Prawde, do you wish to be heard?

MS. PRAWDE: Yes, Your Honor.

THE COURT: Okay.

MS. PRAWDE: I'll try and do much briefer than I was previously.

THE COURT: I'm okay.

MS. PRAWDE: I will also try my best to, I will similarly I think be jumping around a little bit. I mean I think the biggest point I want to make today is for Quiet Title we just, the Plaintiff just needs to show at a minimum color of title, which has been done here. We've shown the conveyance, the deed in 2013 that's entered in the Land Records of Washington County to Mr. Estes, which describes the property as it is in deed, I'm sorry, as to plat 9186, which clearly shows where that boundary line is. At a minimum that's color of title. It's to Uncle Eddies or any of the other defendants to show superior title. That has not been done here. And if they cannot show superior title then Quiet Title needs to be entered in Plaintiff's favor. There's, again, there's been nothing here that shows that Uncle Eddies had any sort of superior title to the property here.

And, again, Your Honor, sorry I be jumping around.

Just to address the letter from Mr. Frederick, Mr. Frederick has consistently testified and stood by the fact that he did not make a mistake in the 1990, 1993, 2006, 2019 plats that he prepared. The letter that Mr. Holder had attached to his filing and which he pulled up on the screen today Mr. Frederick was asked about that in his deposition. He testified consistently that he prepared that letter after Mr. Holder had come to him and said that Mr. Estes and Mr. Holder were trying to work something out. Can you prepare a letter? But if you - - I would ask Your Honor to take a close look at that letter. Mr. Frederick consistently says in that letter that he stands by what he prepared. He says in that letter that it never calls for, it never calls for running down the center of the creek. That that's not where that boundary is. So, Mr. Frederick has been consistent with where he says that that boundary is, in which has been recorded in the land records for Washington County.

As to what Mr. Dowling has testified to and what Mr. Nagle has testified to, Your Honor, sort of putting that aside I think that just through the chain of title we can show color of title here can show record title regardless of what Mr. Nagle or what Mr. Dowling had testified to. And just to be clear, Mr. Nagle did and I think Your

Honor I believe had asked Mr. Holder about this. He simply sort of indicates where he believes the stone is and he just has a boundary line running through the creek. It doesn’t go to any of the calls. He doesn’t plot any of those calls which is what Mr. Dowling points out is extremely deficient in what Mr. Nagle had done. That plat that Mr. Nagle prepared it conflicts with Defendant’s own previous recorded surveys. And it’s inconsistent with Plaintiff and Defendant’s deeds. It conflicts with over a hundred years of deeds and surveys in the chain of title that Mr. Nagle admits in his testimony, in his deposition that he did not take any of that into account. He simply just had this boundary line going down the middle of the creek.

And, included in that, he fails to plot the very deed that he’s purporting to memorialize the confirmatory 2021 deed. And so, what Mr. Dowling did as Plaintiff’s expert who was brought in as a rebuttal expert and in his Affidavit, which is Exhibit 14 for our Motion for Summary Judgment as well as in his testimony, he repeatedly makes clear that he is agreeing with what Mr. Frederick says. That the, that the boundary line as it’s reflected in plat 9186 as it’s reflected in the conveyance in 2013 to Mr. Estes that that is the proper boundary line. Mr. Dowling is consistent about that. There’s no dispute about that. And in the, the diagram that Mr. Dowling had prepared, which is attached to his Affidavit, those blue and red lines are reflecting him actually plotting where the call or where the lines are based on deeds from the 1800's, which reflects, again, that Mr. Estes property does cross over Little Antietam Creek and that blue line is actually showing that using what Mr. Nagle did you can then if you actually do the plot that Mr. Estes property would actually be much further than to the west than what even Mr. Frederick found. That even more of that land would belong to Mr. Estes, not the other way around.

So, again, what Mr. Dowling has testified to what he included in his Affidavit, it's consistent with what Mr. Frederick said and his testimony is that what Mr. Nagle did in failing to plot or for ignoring those hundred years of reported deeds, failing to actually plot the calls in the confirmatory deed or in any of the other deeds does not accurately show where the property line is. I don't think that there's any sort of need for, again, I think this is a question of law. This is something that Your Honor can interpret the deeds and the surveys without the need for, you know, for any further lack of testimony from Mr. Dowling or Mr. Nagle or Mr. Frederick.

And as to adverse possession, in terms of this being sort of open and notorious I mean for years and throughout the 90's, in 2006 and then even when the property was conveyed to Uncle Eddies and 2018, 2019, there were deeds and surveys reported in the land records that show where the property was. I don't think it could be any more open and notorious than that.

And, again, jumping around to Ms. Peeples' point and just to (unintelligible) we have withdrawn our Motion for Summary Judgment as to Ms. Holder as to, you know, 5409 trespassing, aiding and abetting.

As to her point though about this merchantableness. The trees in 5409 so that was not something that any of the Defendants raised in their oppositions to our Motion for Summary Judgment, so, we therefore did not brief it in our replies. However, that was an issue that I believe Mr. Holder had raised in a Motion to Dismiss way back when and Mr. Estes had briefed that issue in his opposition to the Motion to Dismiss Count 2. And in there, again, that Motion to Dismiss was obviously denied. And in that briefing Mr. Estes points to the legislative history behind 5409, which makes it clear that the purpose of it was not just for trees that would lead to timber and that could also be used for other types of purposes not just, not just timber, in that the types of trees that were on Mr. Estes property that were cut down are types of trees that, you know, are regularly sold, can regularly be sold by profit. We had included a link to the Department of Natural Resources to their website which indicates that these types of trees are even sold by the Department of Natural Resources as well as, you know, obviously other entities and that these trees can be sold for all kinds of reasons whether that's ornamental purposes to be used as mulch, to be chopped up as firewood, all sorts of reasons. So, that's as to the merchantable piece of 5409.

And just as to what Your Honor had asked previously about Uncle Eddies and, you know, it's ability to defend a lawsuit even if it's not registered in the State of Maryland. I think that is, as I said, accurate. You know, this is an in rem quasi in rem proceeding related to Quiet Title. And sort of this dispute about the land. I'm not really sure if Uncle Eddies, you know, given that really can when it's making sort of this claim where it's disputing the property and saying that essentially that that property belongs to it part of the property belong to it that it can do so without being a registered entity in the State of Maryland.

Court's indulgence, Your Honor, I just want to make sure I'm not missing anything I wanted to say.

And just the last thing, Your Honor, I know I already mentioned, I mean Mr. Dowling in his testimony and in his Affidavit makes clear that it’s his expert opinion that the Holder property or the Uncle Eddies property that that does begin on the west side of the creek. And that the Estes property in its descriptions going back hundreds of years or hundred years includes calls to crossing the creek in those descriptions.

So, unless Your Honor has further questions we would again ask for Summary Judgment in Plaintiff’s favor.

THE COURT: And Mr. Dowling’s drawing actually would - - He has the line further west than even Mr. Frederick had it, is that fair to say?

MS. PRAWDE: That’s correct.

THE COURT: Okay. Ms. Prawde, if I have three experts who seem to say the line is in three different places how can I grant Summary Judgment? How can I just pick one on Summary Judgment?

MS. PRAWDE: I think Your Honor on Summary Judgment should interpret what the deeds and the surveys say. I mean, all that Mr. Frederick has done has been recorded in the Land Records. And what Mr. Nagle did, you know, he disregarded everything that’s in the land records. He disregarded all the chains of title. He simply looked at this 1 1832 deed he put down where the stone where he believed that stone was and he drew a line straight through the creek. Mr. Dowling, I mean I don’t think that there’s any sort of dispute about his interpretation of the chains of title. He didn’t look at the chains of title. Mr. Dowling, I mean I think he even says in his deposition that you know he’s not a, he’s not a title expert. He’s a surveyor expert. And what Uncle Eddies needs to show here is superior title. And there’s nothing that Mr. Nagle has done or would be testifying to that is going to show superior title by Uncle Eddies.

So, Your Honor, I think that just by looking at what has been submitted in terms of the testimony by Mr. Frederick, the deeds in the plats themselves that are in the land records and then, you know, taking into account what Mr. Nagle has done but recognizing that that does not properly, does not apply nor does it properly apply what is actually shown in these chains of title. So, I think that Your Honor can make that determination and that there’s not any sort of dispute of fact as to what that chain of title is showing.

THE COURT: Okay. The Motion for Summary Judgment as against Deena Holder is withdrawn as to which counts?

MS. PRAWDE: It’s withdrawn as to all counts other than Quiet Title and ejectment.

THE COURT: So, Count 1, 2, 3, 4? Okay. That’s what I wrote down.

MS. PRAWDE: Correct.

THE COURT: Okay, very good. Okay, so that everybody knows I'm not making a decision today. This is a complex situation. It's a very interesting situation, a tremendous amount of work has gone into it. And so, I'm going to take under advisement the Motion for Summary Judgment, the Oppositions thereto, everything that I have heard today before making a decision. Okay.

MS. PRAWDE: Thank you, Your Honor.

THE COURT: Yes. Let's move on to Ms. Peeples.

MS. PEEPLES: Your Honor, I filed on Friday I filed and just in gearing up to prepare for the trial and I also think some of the arguments in the letter are germane to some of the arguments that were raised today at this hearing. Defendant, I'm sorry, Plaintiff, the Plaintiff hasn't named any expert witnesses that would be able to testify in terms of the types of trees that were taken down. I mean, in his own answers to interrogatories he cannot identify the trees and then for summary judgment purposes there's an Affidavit claiming what kind of trees he believes were there. But at the end of the day to prove damages, damages is an essential element of the case and I believe based on my review of all the deposition transcripts both with Mr. Estes, all the documents provided, I think that there's a strong argument to be made to at least warrant the filing of a motion in limine on the damages in as much as there isn't any expert testimony to opine as, to create an apples to apples comparison as to what types of trees would be utilized to plant. And I also think that you need to know the Court needs to know the extent of damages and that goes back to the merchantable provision of 549 as well. And I know that the Motion for Summary Judgment has been withdrawn but with the extent that Ms. Holder still is a Defendant in this case it's incumbent upon me to raise these issues before the Court.

THE COURT: Right.

MS. PEEPLES: Also, with respect to the other motion in limine in terms of agency, if you look through the discovery, and I alluded to this and for strategic reasons, I did not file a Motion for Summary Judgment. I thought about it but I, I did not and that's not for the Court to hear why I chose or why I didn't do something, but I alluded to a lot of the arguments in my Opposition to Summary Judgment just to kind of point out to the Court with respect to Ms. Holder how things are flawed. And when you look at the discovery and when you look at Mr. Estes deposition and when you look at his Answers to Interrogatories there has not been any single shred of evidence that there has been established an agency relationship between Deena Holder as an individual and Justin Holder to give rise to any kind of liability on the part of Deena Holder. And I think that as a preclusion, and an issue preclusion issue it should be raised in a Motion for Limine because I don't want suddenly now based upon the evidence that I've seen or the lack of evidence that this agency argument comes in at the eleventh hour when there's been no proof of it to date. And I could thoroughly brief, I could thoroughly brief the Court as to the case law and everything else that form the basis of my letter.

THE COURT: Okay. So, really what your letter is asking for is the opportunity to file those two motions?

MS. PEEPLES: Correct, Your Honor.

THE COURT: Okay.

MS. PEEPLE: And I may - - I may come up with more. The way I interpret the case, your case management order, Your Honor, you said substantive motion. I view a motion in limine as a substantive motion so I wanted to make sure that I wasn't not following proper procedure in seeking to file these motions.

THE COURT: Okay. I will, I'll take a look at your letter in more depth. I have read it but let me look at it again. And just so that you know it may be that I say yes go ahead and file the Motion in Limine on the agency issue but maybe hold off on the monetary damages because monetary damages are not going to be an issue for our October trial. Right?

MS. PEEPLES: Okay. No, I understand. I wanted to be as transparent with opposing counsel as possible.

THE COURT: I appreciate that and I know that they all appreciate that as well. So, I'll look at it and I'll issue and Order, okay. I understand your point of view.

MS. PEEPLES: Thank you, Your Honor.

THE COURT: Okay.

MS. PRAWDE: And, Your Honor, if I may?

THE COURT: Yes.

MS. PRAWDE: And just so I'm clear, and I certainly appreciate Ms. Peeples putting that down in the letter making that request to the Court about filing the motions in limine, is that something that for all motions in limine you would like us to do is to provide a letter first before filing? I imagine both of us will be having motions in limine.

THE COURT: I think that would probably be in good keeping with the case management order the way that Ms. Peeples did it.

MS. PRAWDE: Okay, we can do that. Thank you.

THE COURT: Alright. Anything else then for today,

Ms. Prawde?

MS. PRAWDE: Nothing else, Your Honor.

THE COURT: Anything else, Ms. Peeples?

MS. PEEPLES: No, Your Honor.

THE COURT: Mr. Kline?

MR. KLINE: No, Judge.

THE COURT: Okay. Mr. Holder?

MR. HOLDER: Your Honor, you had mentioned an order bifurcating the trial but I checked my records and I didn't, I don't have a copy of that order. Is that something that hasn't been docketed or, or should I perhaps dig further into MDEC?

THE COURT: Hang on a second. I will check to make sure that it's in there. I signed it on February 4 of this year.

MR. HOLDER: Okay.

MS. PRAWDE: And, Your Honor, I did recently see it on the docket so I think it just might be hidden in there but I believe it is on the docket.

THE COURT: Yes, there's a lot of paper in the case. So, it just might be hidden there. Check around February 4, 2022, Mr. Holder, okay.

MR. HOLDER: I will. Thank you very much, Your Honor. Thank you, Ms. Prawde.

THE COURT: Okay. And so that you understand my reasoning for that Mr. Holder I think everybody agrees that the, you know, everybody's argued today to some degree that the Quiet Title where that line is, is really for a judge to decide not a jury. And what I didn't want to do is put in a box, six jurors citizens of our county to sit through three days of trial to figure out how much a tree is worth if I found that the line is in the creek and therefore was no trespass. That be unfair to those six people, right?

MR. HOLDER: Perfectly, perfectly understood. Absolutely I – -

THE COURT: I think the line has to be found before I take the time of citizens of our County. If it can be found on summary judgment, I'll find it on summary judgment. If I can't find it on summary judgment we'll have a three day trial to find out where that line is, okay.

MR. HOLDER: Okay, thank you, Your Honor.

THE COURT: Alright, very good. Thank you all very much. See you next time.

MS. PEEPLES: Thank you, Your Honor.

THE COURT: Yes, thank you.

END OF PROCEEDINGS AT 11:42 A.M.

Digitally signed by Linde M. Cessna

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Benjamin Estes v. Justin Holder, et al.*, Case No. C-21-CV-20-430 in the Circuit Court for Washington County, on August 2, 2022, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 79 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 19th day of September, 2022.

Linde M. Cessna

Linde M. Cessna
Court Reporter

IN THE DISTRICT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES *

Plaintiff *

vs. * Case No. D-112-CV-20-007201

JUSTIN HOLDER *

Defendant *

* * * * * * * * *

MOTION TO TRANSFER CASE TO THE CIRCUIT COUNTY FOR WASHINGTON COUNTY, MD

COMES NOW the Plaintiff, Benjamin N. Estes, by and through his attorney, Brendan M Callahan, and pursuant to Md. Rule 3-503(a)(2) and Cts. & Jud. Proc. Section 6-104(b), respectfully moves this Honorable Court to transfer the above-captioned cause to the Circuit Court for Washington County, Maryland to one consolidated with Case No. C-21-CV-20-000430, and for reasons states:

1. That Maryland Rule 3-503 (a)(2) states:

> "Transfer to Circuit Court for Consolidation. An action instituted in the District Court may be transferred to a circuit court for consolidation with an action pending in that court under the circumstances described in Code, Courts Article, § 6-104(b)."

2. That Maryland Courts and Judicial Proceedings Article, § 6-104(b) states:

> "(1) When actions involving at least one of the same parties, with the same subject matter, issues, and defenses arising out of the same circumstances, are instituted in the District Court and a circuit court of the State, the party who filed the action in the District Court may file a motion in that court to remove the action to the circuit court for consolidation with the action pending in circuit court."

3. That the above-captioned case involves the same parties, subject matter, issues,

defenses, and circumstances as Circuit Court Case No. C-21-CV-20-000430. Both allege trespass on the same area of land at the same time, and involve the same witnesses. However, Defendant's defense of superior title to the disputed property means that the Circuit Court will have to determine proper title to the disputed real estate prior to any litigation of any other issue. Currently, trial date is set in the District Court for June 7, 2021, but case number C-21-CV-20-000430 in the Circuit Court is not set until July 14, 2021.

4. That the issue of whether Defendant trespassed on Plaintiff's property requires resolution of which party holds proper title to the disputed property which are properly the jurisdiction of the Circuit Court.

5. That, since Defendant is claiming title to the disputed property, it is impossible for the District Court of Maryland for Washington County to rule on the issue of trespass prior to the Circuit Court for Washington County resolving the title dispute.

6. That it is in the interest of judicial economy and efficiency to transfer the above-captioned case to the Circuit Court for Washington County.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court transfer the above-captioned case to the to the Circuit Court for Washington County, Maryland to one consolidated with Case No. C-21-CV-20-000430.

Respectfully Submitted,

/s/Brendan M. Callahan
Brendan M. Callahan
#9806230081
P.O. Box 1091
Prince Frederick, MD 20678
(443) 975-7420

brendan.callahan@callahanlawgroupllc.com

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 29th day of March, 2021, a copy of this Motion was mailed to Defendant Justin Holder at 308 W. Chapline Street, Sharpsburg, MD 21782..

/s/Brendan M. Callahan
Brendan M. Callahan

CERTIFICATE OF REDACTION

I DO HEREBY CERTIFY that the foregoing filing does not contain any restricted information under Rule 1-322.1.

/s/Brendan M. Callahan
Brendan M. Callahan

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN HOLDER

Defendant

v.

Benjamin Estes

Plaintiff

CASE NO.: C-21-CV-20-000430

* *

Motion for Partial Summary Judgement on Count VI Ejectment

Paragraph 46 through 51 of Complaint - Count VI

46. Plaintiff incorporates by reference the allegations in paragraphs 1-45 of this Complaint.

47. In the alternative, and only to the extent that the Court determines that Defendants are in actual or constructive possession of some portion of the Estes Property, Plaintiff is entitled to relief by way of ejectment under Md. Real Prop. Code Ann. §14-108.1.

48. Defendants have denied Plaintiff's title to the Estes Property, contending that the western boundary of the Estes Property does not include any land on the western side of Little Antietam Creek.

49. Defendants have repeatedly and unlawfully entered the Estes Property.

50. Plaintiff is the rightful, legal owner of the entirety of the Estes Property, including land on the western side of Little Antietam Creek.

51. Pursuant to the common law and Md. Real Prop. Code Ann. §14-108.1, Plaintiff is entitled to a judgment ejecting Defendants from the Estes Property, quieting title to the entirety of the Estes Property in his favor and enjoining the Defendants from further trespass.

Motion for Partial Summary Judgement on Count VI
Ejectment

Now Comes Justin Holder, Pro Se and humbly requests the Honorable Court to enter judgment as a matter of law in favor of the Defendant and against the Plaintiff as to Count VI for Ejectment, and other appropriate relief and for the reasons stated as follows:

INTRODUCTION

Plaintiff has sued the Defendants in a six-count complaint for injunctive relief and damages alleging Trespass and Ejectment from Land, under Real Property Article 14-108.1 and others. Because certain material facts stated herein are not disputed, and because the straightforward application of the law to those facts compels but a single result, the expeditious resolution of these issues will significantly narrow the totality of issues required to be tried to verdict in this matter. The grant of partial summary judgment for the reasons stated herein comports with the justice, the applicable legal standards, and serves the ever-increasingly important principles of judicial economy.

Undisputed Facts

1. That on December 1st, 2020 Defendant caused discovery, including Interrogatories to be served upon the Plaintiff.

2. That on January 13th, 2021 Defendant was served answers to discovery, specifically Interrogatory questions.

3. That after extensive communications with Plaintiff Council more complete answers to Interrogatories were served upon Defendant on March 28th, 2021. (Despite Plaintiff Attempt to trick the court by errouniously stating on the top right corner of first page of said Interrogatories "E-FILED; Washington Circuit Court Docket: 1/2/2021 8:09 AM; Submission: 1/2/2021 8:09 AM" of the emailed .pdf file of amended answers to Interogatories served on 12/01/2020 and delivered on March 28th, 2021.)

4. That Interrogatory question 9 of Interrogatories from Defendant Justin Holder to Plaintiff

requests:

"Please describe or reference by Liber and Folio any land records in Washington County Maryland, that claim equitable title by yourself or your predecessor, to any land south of the branch of the "big Spring ", (that is the source of the towns water) as it flows into the Little Antietam Creek, prior to 1880."

5. That Plaintiff's March 28th, 2021 answer to Interrogatory 9 states:

"a. Objections: The question seeks information which is available to all parties equally, and is therefore oppressive and burdensome to Plaintiff/Defendant."

b. All information requested by this question is of public record in the land records for Washington County, MD. Some relevant recorded documents are as follows, but do not precede 1880:

i. Plaintiff's deed dated March 13, 2013, such deed recorded among the land records for Washington County Maryland at Liber 4401, Folios 0100-0103, describing the Plaintiff's property as "said land being more particularly shown and designated as Lot 2 in that certain plat of subdivisions entitled "Preliminary/ Final Plat of Subdivision of Lot 2 for M. Yvonne and Maxwell B. Hope, II" prepared by Frederick, Seibert and Associates dated September 27, 2006 and designated as job # 1967.2 and recorded in Plat folio 9186 among the plat records maintained by the Clerk of the Circuit Court for Washington County, Maryland";

ii. Certain plat of subdivisions entitled "Preliminary/Final Plat of Subdivision of Lot 2 for M. Yvonne and Maxwell B. Hope, II" prepared by Frederick, Seibert and Associates dated September 27, 2006 and designated as job # 1967.2 and recorded in Plat folio 9186 among the plat records maintained by the Clerk of the Circuit Court for Washington County, Maryland.

iii. Plaintiff's predecessors in title, namely, Maxwell B. Hope II and M. Yvonne Hope's deeds recorded in Liber 1092 at Folio 694 dated May 14, 1993 and subsequently by Confirmatory Deed dated July 15, 1993 recorded at Liber 1108 at Folio 582 in the Land Records for Washington County Maryland.
iv. Recorded plat entitled "Preliminary Plat of Subdivision of Lot 1 for Richard Jolles" prepared by Frederick Seibert and Associates, Inc., and recorded among the plat records for Washington County, MD, at Plat Folio 4040."

v. Deed to Deena Holder recorded at Book 5827 Page 370 among the land records for Washington County, Maryland.

vi. Deed recorded at Book 5726 Pages 224-231 among the land records for Washington County, Maryland.

vii.A survey dated April 2018 by Frederick, Seibert & Associates of Defendant Deena Holder's deeded property.
viii.Plat 10955, recorded April 18, 2019 in the land records for Washington County, Maryland."

7. That Interrogatory question 18 of Interrogatories from Defendant Justin Holder to Plaintiff requests:
" If you contend that you, your predecessors in title, or any other party has adversely possessed land west of the Little Antietam Creek, or South of the Big Spring Branch, set forth any and all facts that establish such adverse possession."

8. That Plaintiff's March 28th, 2021 answer to Interrogatory 18 states:
"a. Plaintiff reiterates his General Objections and adds that the question seeks information
which is available to all parties equally, and is therefore oppressive and burdensome to Plaintiff.
b. All information requested by this question is of public record in the land records for Washington County, MD. The Plaintiff and his family and his predecessors in title have claimed title by public record and use for at least 27 years."

9. That Interrogatory question 19 of Interrogatories from Defendant Justin Holder to Plaintiff requests:
"If you contend that Deena Holder, Uncle Eddie's Brokedown Palace, LLC, or any of their predecessors in title do not have record title to all lands west of the Little Antietam Creek at or near the confluence of the Big Spring Branch, please provide all evidence in title, land records, plats, deeds etc to support the loss of said equitable title."

10. That Plaintiff's March 28th, 2021 answer to Interrogatory 19 states:
"a. Objections: Plaintiff reiterates his General Objections and adds the question seeks information which is available to all parties equally, and is therefore oppressive and burdensome to Plaintiff.
b. All information requested by this question is of public record in the land records for Washington County, MD and is contained in Defendant Deena Holder's Deed and in the Deed granted to Uncle Eddies Brokedown Palace, LLC for the land known as 28 Antietam Drive, Keedysville, MD 21756, as well as within the Defendants' recorded plats all of which are of public record and in the Defendants' possession. Additional evidence is readily available in the public land records for Washington County, MD for all of the properties that are related to the proceeding. Also please see the Plaintiff's response to Interrogatory 9, above.

11. That in the Amended Complaint served March 17th, 2021 paragraph 2 defines the Land as:
"The real property at issue in this case (the "Estes Property") is commonly known as Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756, is identified for taxation purposes by
Tax ID No. 19-013316 and is more fully described as:

Being all of Lot 2 on the Plat of Subdivision entitled "Preliminary/Final Plat of Subdivision of Lot 2 for M. Yvonne & Maxwell B. Hope, II" prepared by Frederick, Seibert & Associates, Inc. dated September 27, 2006 and designated as Job No. 1967.2 and recorded in Plat folio 9186 among the Plat Records maintained by the Clerk of the Circuit Court for Washington County, Maryland; containing 8.28 acres of land, more or less."

12. That Defendant Justin K. Holder has conducted a thorough search of the Grantor/Grantee index and has not located title to ALL the Land that is a matter of this action.

LEGAL STANDARD - Summary Judgment

Maryland Rule 2-501(a) provides:

Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record.

Rule 2-501(b) provides:

A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

Rule 2-501(f) provides:

The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602(b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. As such, when the material facts are not genuinely disputed, and the application of the law to those facts requires an outcome in favor of the moving party, the court should, pursuant to the rule, and in service of principles of judicial economy, grant judgment in favor of the moving party. To overcome a motion for summary judgment, the opposing party must demonstrate a genuine dispute as to a material fact by proffering facts that would be admissible in evidence. *See Hoffman Chev. v. Wash. Co. Nat'l Sav*., 297 Md. 691, 711-15 (1983); *Shaffer v. Lohr*, 264 Md. 397, 404 (1972); *Broadfording Ch. v. Western Md. Ry.*, 262 Md. 84, 89 (1971). General allegations which do not establish admissible facts in detail and with precision are insufficient to prevent summary judgment. *Lynx, Inc. v. Ordnance Products*, 273 Md. 1, 7-8 (1974). *Brown v. Suburban Cadillac, Inc*., 260 Md. 251, 256-57 (1971).

LEGAL STANDARD - Ejectment

1. Plaintiff's Amended Complaint asserts an action for possession under Real Property Article, § 14-108.1, which provides:

"(b)(1) A person who is not in possession of property and claims title and right to possession may bring an action for possession against the person in possession of the property."

2. Plaintiff's claim for possession is in the alternative to its claim to quiet title. A party who is not in actual or constructive possession of property cannot plead a quiet title action, and must, instead, resort to an action for possession, otherwise known as an ejectment action. The Court of Special Appeals described this distinction between the actions in Porter v. Schaffer, 126 Md. App. 237 (1999):

"We believe the rule articulated in the foregoing authorities appropriately reflects the difference between an action in ejectment and an action to quiet title. Historically, quiet title was an equitable remedy, whereas ejectment was a remedy at law. Prior to the merger of law and equity in 1984, see Md. Rule 2-301, plaintiffs were required to determine, as a matter of pleading, whether to proceed in equity or law. The fundamental difference between the two was the question of possession. The "ground of equity jurisdiction" in a bill quia timet was the fact of actual or constructive possession. Barnes v. Webster, 220 Md. 473, 475, 154 A.2d 918 (1959); see Thomas v. Hardisty, 217 Md. 523, 529, 143 A.2d 618 (1958); Textor v.

Shipley, 77 Md. 473, 475, 26 A. 1019 (1893). Thus, when an owner was not in possession, a bill quia timet would not lie, because the owner could resort to the legal remedy of ejectment. See Glorius v. Watkins, 203 Md. 546, 549, 102 A.2d 274 (1954) (rejecting equity jurisdiction because the plaintiff was not in possession, stating: "Equity entertains jurisdiction where, although the complainant fears vexatious litigation due to a cloud on his title, he nevertheless cannot sue in ejectment because he is already in possession.")."

3. The Porter Court made clear that RP 14-108.1 is the means by which an ejectment action is brought.

"Possession by the putative owner continues to be a distinguishing feature of an action to quiet title. In 1955, the Legislature enacted Md.Code (1951, 1955 Repl.Vol.), Art. 16 § 128, the predecessor to the current quiet title provision, now found in R.P. § 14-108. See 1955 Md. Laws, Chap. 376. Real Property § 14-108 requires a claimant to prove "actual peaceable possession of property" or, in the case of wild lands, "constructive and peaceable possession of it." R.P. § 14-108(a). Ejectment actions involving tenant-landlord disputes and remedies for unlawful possession of the premises after the delivery of a deed were placed in the original jurisdiction of the district court. See R.P. § 8-402 through § 8-402.2; R.P. § 14-109. In all other cases, "a person who is not in possession of property and claims title and right to possession" may bring an action for ejectment in the circuit court, pursuant to R.P. § 14-108.1. Nevertheless, in Thomas v. Hardisty, supra, 217 Md. at 530, 143 A.2d 618, the Court of Appeals made clear that the quiet title statute did not "derogate or in any way conflict[ ] with" the "firmly established" jurisdictional divide between quiet title and ejectment. See Romney v. Steinem, 228 Md. 605, 608, 180 A.2d 873 (1962); Cherry v. Siegert, 215 Md. 81, 85, 136 A.2d 754 (1957) (stating that the 1955 statute was "merely declaratory of the law as it existed prior to June 1, 1955")." (Emphasis added).

4. Thus, the Plaintiff's action for possession under RP § 14-108.1 is an action at law for ejectment.

5. The Court then explained the important policy reasons for the allocation of the burden of proof in an ejectment action:

"Possession is relevant to a discussion of the burdens of proof in the following sense. In an action in ejectment, it is the defendant who has possession. A possessor should not be ousted by one whose title is weakened by the claim of a third party, because as between a possessor-defendant and the person seeking ejectment, the possessor has a stake in the property, by virtue of his possession, which outweighs the stake of a non-possessing plaintiff whose title is inferior to that of a third party. In a quiet title action, however, the plaintiff, and not the defendant, must prove possession and a legal claim to title before the burden is shifted to the defendant to establish superior title. Therefore, unlike an action in ejectment, the defendant in a quiet title action who cannot establish his own record title has no basis to complain about the strength of the plaintiff's title, even if a third party may have a superior record title claim."

6. Plaintiff must establish his own title, and he must establish that his action is not barred by limitation - that is to say that the Plaintiff has not lost title by the adverse possession of the Defendants and/or their predecessors in title. "Unless the plaintiff in ejectment shows a legal title and a right to possession, not barred by the Statute of Limitations, he cannot recover in ejectment under the settled law of this State, no matter what may be the rule in other jurisdictions."

Joseph v. Bonaparte, 118 Md. 591 (1912).

Argument - Burden of Proof

Plaintiff has not established and cannot establish his good title back beyond 1990, let alone to the original patents from the State.

Plaintiff has produced answers to interrogatories, responses to request for production of documents and four sets of request for admissions, and has yet to produce any evidence of the strength of his title, as is his explicit burden.

That contrary to statement in paragraph 47 of Amended Complaint, Plaintiff is not afforded such relief by Statute.

That contrary to statement in paragraph 48 of Amended Complaint, Plaintiff does not have superior title the "Estes Property".

That contrary to statement in paragraph 49 of Amended Complaint, Defendants have entered property by claim to right.

That contrary to statement in paragraph 50 of Amended Complaint, Plaintiff is **NOT** the rightful, legal owner of the entirety of the Estes Property, including land on the western side of Little Antietam Creek.

That contrary to statement in paragraph 51 of Amended Complaint, Plaintiff entitled to a judgment ejecting Defendants from the Estes Property.

Wherefore:

Wherefore the Defendant humbly requests judgment as a matter of law in favor of the Defendant and against the Plaintiff as to Count VI for Ejectment, because plaintiff is unable to bring forward sufficient evidence proving the strength of his title.

Verification

CERTIFICATE REGARDING RESTRICTED INFORMATION

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the Undisputed Facts section, paragraph's 1 to 12, under the "Undisputed Facts" headings are true and correct to the best of my knowledge and belief.

Justin K. Holder

AND

I HEREBY CERTIFY that this document does not contain any restricted information.

Justin K. Holder, Pro Se
308 W. Chapline St.
Sharpsburg, MD 21782
(240) 356 - 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April 2021, a copy of the foregoing Motion for Partial Summary Judment was served via the MDEC system on Brendan M. Callahan, ESQ. Attorney for Plaintiff;

Attroney for Plaintiff, via MDECMark W. Schweitzer, Aaron D.Neal, and McNamee,Hosea, Jernigan, Kim,Greenan & Lynch,P.AviaMDEC on Aaron Neal, asMcNamee, Hosea, Jernigan,Kim, Greenan & Lynch, P.A'writ large

Matthew Ruble via MDEC Attorney forCo-Defendant

Justin K. Holder

Justin Holder, Pro Se

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, *et al.*

Defendants

Case No. C-21-CV-20-000430

OPPOSITION TO JUSTIN HOLDER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The Plaintiff, by and through his attorneys, Mark W. Schweitzer, Aaron D. Neal, and McNamee Hosea, P.A., responds in opposition to Defendant Justin Holder's motion for partial summary judgment, and says:

1. Mr. Holder moves for summary judgment as to Count Six of the Amended Complaint, which is a claim for ejectment.
2. It appears that basis for Mr. Holder's requested relief is that he does not believe that Plaintiff can meet the burden of proving his title to the real property that is dispute.
3. While Mr. Holder is correct that the burden of proof is on Plaintiff to prove up his title, Mr. Holder is incorrect in opining that Plaintiff cannot meet that burden.
4. Both record title and the opinion of land surveyor Fred Frederick unambiguously show that Plaintiff owns the land in dispute.
5. In the alternative, Plaintiff has presented a *prima facie* case of adverse possession with respect to the land in disputed.
6. As such, Mr. Holder's motion should be denied.
7. Plaintiff incorporates by reference the attached Memorandum.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Justin Holder's Motion for Partial Summary Judgment.

Respectfully submitted,

McNamee Hosea, P.A.

/s/ Mark W. Schweitzer
Mark W. Schweitzer, Esq.
CPF No. 9708180005
mschweitzer@mhlawyers.com

/s/ Aaron D. Neal
Aaron D. Neal, Esq.
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aneal@mhlawyers.com
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770
Tel. 301-441-2420
Fax 301-982-9450

Attorneys for the Plaintiff

Certificate of Service

I hereby certify that on this 12th day of May, 2021, the foregoing paper filed via MDEC and thus served electronically upon all registered parties, including:

Brendan Callahan, Esq.
Justin Holder
Matthew Ruble, Esq.
Robert L. Kline, III, Esq.
Talley Kovacs, Esq.

/s/ Aaron D. Neal
Aaron D. Neal, Esq.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, *et al.*

Defendants

Case No. C-21-CV-20-000430

MEMORANDUM IN SUPPORT OF PLAINTIFF'S OPPOSITION TO JUSTIN HOLDER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The Plaintiff, by and through his attorneys, Mark W. Schweitzer, Aaron D. Neal, and McNamee Hosea, P.A., submits this Memorandum in support of his opposition to Defendant Justin Holder's motion for partial summary judgment, and says:

I. OVERVIEW.

This action arose from a series of trespasses by Mr. Holder onto Plaintiff's property. In response to the filing of this suit, Mr. Holder raised a frivolous dispute regarding the location of the boundary line between the Holder Property (owned by Deena Holder and Uncle Eddie's Brokedown Palace LLC) and the neighboring Estes Property (owned by Plaintiff) in an attempt to avoid liability for trespass. Ignoring the plain language of the deeds in the chains of title for both properties as well as the opinion of a surveyor that he hired, Mr. Holder has taken the position that the shared boundary between the two properties runs down the western side of Little Antietam Creek. The chain of title for both properties contains specific calls and distances for that boundary line that do not run down Little Antietam Creek and in fact expressly leave the creek and run beyond the western edge of the creek where the properties share a boundary. Because of that, there is a small peninsula on the west side of Little Antietam Creek that is separated from the bulk of the Estes Property but nonetheless is owned by the Plaintiff, along with the creek itself. Mr. Holder wants title to that property and the creek regardless of whether he is entitled to same.

Now, Mr. Holder moves for summary judgment on Plaintiff's ejectment claim, arguing that Plaintiff cannot meet his burden of proof. As is set forth above and more fully below, Plaintiff can meet and has met his burden, with the plain language of the chain of title, the opinion of Frederic Frederick, an engineer and land surveyor, and with the allegations supporting Plaintiff's alternative claim for adverse possession. Mr. Holder's argument is wholly without merit and his motion should be denied.

II. FACTS.

Mr. Holder's statement of "Undisputed Facts" consists almost entirely of his restating his Interrogatories and portions of Plaintiff's responses thereto. While it appears that Mr. Holder has more or less accurately copied portions of Plaintiffs' responses, Plaintiff's actual answers are attached hereto as Exhibit 1. Plaintiff is unable to identify any of Mr. Holder's "Undisputed Facts" as being somehow relevant to his motion. The following facts are those that are actually relevant and material to the underlying title dispute.

1. Plaintiff is the owner of Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756, Tax ID No. 19-013316 (the "Estes Property"). *See* Exhibit 2 – Plat 9186; Exhibit 10 – Estes Deed; Second Amended Compl. at ⁋2.[1]
2. Defendant Deena Holder claims to be the owner of 28 Antietam Drive, Keedysville, Maryland. 28 Antietam Drive is further identified on the Plat attached hereto as Exhibit 3 as "Proposed Reconfigured Parcel 127". *See* Exhibit 3 – Plat No. 10955; Second Amended Compl. at ⁋19.

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[1] Plaintiff's Second Amended Complaint was verified under oath by the Plaintiff.

3. Defendant Uncle Eddie's Brokedown Palace LLC ("Uncle Eddies") claims to be the owner of the real property identified on the Plat attached hereto as Exhibit 3 as "Proposed Reconfigured Parcel 414". *See* Exhibit 3; Second Amended Compl. at ⁋20.
4. Proposed Reconfigured Parcel 127, Proposed Reconfigured Parcel 414, and the predecessor parcels to each shall collectively be described herein as the "Holder Property".
5. The attached Exhibit 4[2] visually depicts the shared boundary running between the Estes Property and the Holder Property. *See* Exhibit 4.
6. The shared boundary runs from the location where "L10" meets "L11" through to the spot where the 269.59' (S25°59'35"W) line terminates at the property corner joining line "L2" and is the red line on Exhibit 4. *See* Exhibit 4.
7. For the sake of clarity, the Estes Property is shown with black diagonal lines on Exhibit 4, the Holder Property is shown with blue diagonal lines (sometimes over black diagonal lines going the opposite direction), and the portion of the Estes Property primarily in dispute (the "Disputed Property") is highlighted with yellow highlighter. Id.
8. Frederick Seibert & Associates, Inc. ("FSA") has surveyed the Estes Property and Holder Property on several occasions. *See* Exhibits 2, 3, 5 and 6.
9. FSA surveyed the Estes Property in 1990 for Plaintiff's predecessor in title. *See* Exhibit 6. The boundaries contained in that survey are consistent with the prior deeds in the chain of title and with the subsequent deeds in the chain of title.
10. FSA surveyed the Estes Property again in 1993 for Plaintiff's predecessor. *See* Exhibit 5.

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[2] This is a portion of the plat recorded among the Plat Records for Washington County, Maryland as Plat No. 10955, an unedited version of which is attached as Exhibit 3.

11. FSA surveyed the Estes Property again in 2007 for another of Plaintiff's predecessors in title. *See* Exhibit 2.
12. Finally, FSA surveyed the Holder Property in 2019 for Mr. Holder, Mrs. Holder and Uncle Eddies. *See* Exhibit 3.
13. While the length of the final course of the shared boundary line between the two properties was eventually determined to be shorter than originally thought (260.59' vs. 280.50') due to a survey of the adjoining Maryland Department of Natural Resources Property, the shared boundary line has otherwise been consistent on all of the plats going back to the 1990's. Second Amended Compl. at ¶26; Exhibits 2, 3, 5, 6 and 7.
14. Furthermore, the delineation of the Disputed Property has remained the same throughout the course of the various surveys and re-surveys. Id.
15. The legal descriptions in the chains of title for both lots each contain a line which follows the Little Antietam Creek. *See* Exhibit 7 – Deposition Transcript of Fred Frederick.[3]
16. However, both chains of title then call for the remainder of the shared boundary line to leave Little Antietam Creek and follow a series of stones set at specific courses and distances. Exhibit 7.
17. Fred Frederick opined that the reference to specific stones, courses and distances meant that the shared boundary line does not follow Little Antietam Creek and that had that been the intention, the deeds would have called to Little Antietam Creek as it had in previous calls. Exhibit 7.

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[3] Mr. Frederick was deposed on April 27, 2021. As of the date of this paper, the Court reporter has not made the transcript available to Plaintiff's counsel. Exhibit 7 is a placeholder for the transcript, which will be submitted via supplement when available along with a list of page and line designations for each citation to the transcript made herein.

18. Mr. Frederick also opined that the Disputed Property is a part of the Estes Property. Exhibit 7.
19. Additionally, Mr. Estes and his predecessors have exclusively possessed the Disputed Property since at least 1993. *See* Exhibit 8 at ⁋15-20; Second Amended Compl. at ⁋29-35.
20. Mr. Holder, Ms. Holder and Uncle Eddies did not begin their trespasses into the Disputed Property until April 10, 2018 when they purchased the Holder Property, long after the twenty-year period for adverse possession had run with respect to the Disputed Property. *See* Exhibit 9 – Holder Deed.
21. Mr. Holder has not presented any evidence to refute Mr. Frederick's opinion or to raise a dispute to the fact that Mr. Frederick's plats followed the courses and distances contained in the Holder and Estes chains of title.

III. ARGUMENT.

Relief in an ejectment action is appropriate where a person that is not in possession of property has title to that property and right to possession thereof. Md. Real Prop. Code Ann. §14-108.1(b). In such a case, the Plaintiff has the burden of presenting a *prima facie* case showing the legal right of possession by "color of title or claim of right by reason of his or his predecessor's adverse possession for the statutory period." Porter v. Schaffer, 126 Md.App. 237, 274-75 (1999). Plaintiff can meet his burden under either analysis.

Color of title simply means good record title.[4] Id. Plaintiff's chain of title, with respect to the shared boundary line with the Holder Property, lines up with the chain of title for the Holder

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[4] Mr. Holder suggests that Plaintiff must prove title back to a patent from the State of Maryland or the King in order to present a *prima facie* claim under color of title. *See* Mot. Summ. Judg. at p.9. While tracing title to a patent is one way to prove title, the actual rule is more lenient: "it shall not be necessary for any party to any such action to prove that the lands in controversy have been patented; but a patent shall in all cases be presumed in favor of the party showing a title 'otherwise good.' The rule requiring the plaintiff to show a legal title is gratified by proof of a title prima facie good." Joseph v. Bonaparte, 118 Md. 591, 85 A. 962, 963 (1912).

Property. Exhibit 7. The deeds have the same calls going west from Little Antietam Creek to stones set west of the banks of the creek. Exhibit 7. Mr. Frederick identified the same lines while separately surveying both the Estes Property and Holder Property at different times. Exhibit 7. When Mr. Holder demanded that Mr. Frederick analyze the boundary lines differently (i.e. consistently with Mr. Holder's claim), he was unable to do so, because Mr. Holder's proposed boundary lines were mathematically impossible. Exhibit 7. While Mr. Holder may not agree with Plaintiff, that is not the test for a *prima facie* case. Plaintiff has set forth a viable claim to ownership of the Disputed Property under color of title, both through the chain of title itself and the expert testimony of Mr. Frederick. If Mr. Holder disagrees with the facts upon which Plaintiff relies, it is his burden to present a legitimate alternative theory now that a *prima facie* case has been presented. Even if Mr. Holder did or could present a legitimate alternative theory, which he has yet to do, the place to resolve a factual dispute between two versions of the facts is trial, not summary judgment.

A "claim of right" is a claim to title by virtue of adverse possession. Plaintiff's predecessor, Maxwell Hope, specifically advised Plaintiff when he bought the Estes Property that it included land on the West side of Little Antietam Creek. Exhibit 8 at ¶18; Second Amended Compl. at ¶33. The boundary on the West side of Little Antietam Creek was demarcated in part by an old fence line, which existed until Mr. Holder trespassed and removed the fence sometime in 2018. Exhibit 8 at ¶18; Second Amended Compl. at ¶33. Per Mr. Frederick, that same fence line runs along the deeded boundary between the two properties. Exhibit 7. Mr. Hope possessed the Disputed Property from 1993 through 2010, when Plaintiff began leasing the Estes Property from Mr. Hope. Exhibit 8 at ¶15-17; Second Amended Compl. at ¶31. From 2010 until Mr. Holder came into the picture in 2018, the possession of Plaintiff and his predecessors had been open, obvious and uninterrupted. Exhibit 8 at ⁋17-20; Second Amended Compl. at ⁋31-35. 1993 to 2018 is a period of 25 years, 5 years more than the required twenty year period for adverse possession. Id.; *See* Senez v. Collins, 182 Md.App. 300, 332 (successive owners can tack their periods of possession to satisfy the twenty year period). Even if Mr. Holder was correct that he (or rather Ms. Holder and Uncle Eddies) owned up to the creek, Plaintiff obtained title to the Disputed Property by adverse possession five years before Mr. Holder first set foot on the Disputed Property. Again, if Mr. Holder can present facts to dispute the adverse possession of Plaintiff and his predecessors, the place to resolve disputes of fact is trial, not summary judgment. Mr. Holder's motion should be denied.

IV. CONCLUSION.

Quite simply, Plaintiff owns the disputed property. Record title clearly reflects that fact and Mr. Frederick's opinion confirms that fact. Even if Plaintiff's record title was deficient, Plaintiff and his predecessors would have taken title by adverse possession years before Mr. Holder ever set foot on the disputed property. Mr. Holder's motion should be denied.

Respectfully submitted,

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Attorneys for the Plaintiff

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v. **Case No. C-21-CV-20-000430**

JUSTIN HOLDER, *et al.*

Defendants

AFFIDAVIT

Benjamin Estes, your affiant, being over 18 years of age and competent to testify, deposes and says:

1. I own Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756, Tax ID No. 19-013316 (the "Estes Property").
2. The document attached hereto as Exhibit 2 is a true and accurate copy of Plat 9186 which depicts the boundaries of my property.
3. The document attached hereto as Exhibit 10 is a true and accurate copy of the deed for my property.
4. Defendant Deena Holder claims to be the owner of 28 Antietam Drive, Keedysville, Maryland.
5. 28 Antietam Drive is further identified on the Plat attached hereto as Exhibit 3 as "Proposed Reconfigured Parcel 127".
6. The document attached hereto as Exhibit 3 is a true and accurate copy of Plat No. 10955 which depicts the property of Deena Holder and Defendant Uncle Eddies Brokedown Palace LLC ("Uncle Eddies").

Exhibit 8

7. Uncle Eddies claims to be the owner of the real property identified on the Plat attached hereto as Exhibit 3 as “Proposed Reconfigured Parcel 414”.
8. Proposed Reconfigured Parcel 127, Proposed Reconfigured Parcel 414, and the predecessor parcels to each shall collectively be described herein as the “Holder Property”.
9. The attached Exhibit 4[1] visually depicts the shared boundary running between the Estes Property and the Holder Property.
10. The shared boundary runs from the location where “L10” meets “L11” through to the spot where the 269.59’ (S25°59’35”W) line terminates at the property corner joining line “L2” and is the red line on Exhibit 4.
11. For the sake of clarity, the Estes Property is shown with black diagonal lines on Exhibit 4, the Holder Property is shown with blue diagonal lines (sometimes over black diagonal lines going the opposite direction), and the portion of the Estes Property primarily in dispute (the “Disputed Property”) is highlighted with yellow highlighter.
12. Frederick Seibert & Associates, Inc. (“FSA”) has surveyed the Estes Property and Holder Property on several occasions.
13. The document attached hereto as Exhibit 5 is a true and accurate copy of a survey plat prepared by FSA.
14. The document attached hereto as Exhibit 6 is a true and accurate copy of a deed containing a metes and bounds legal description of the Holder Property that was prepared by FSA.

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[1] This is a portion of the plat recorded among the Plat Records for Washington County, Maryland as Plat No. 10955, an unedited version of which is attached as Exhibit 3.

15. Maxwell Hope and Yvonne Hope purchased the Estes Property in 1993.

16. From 1993 through 2010, the Hopes continuously maintained open, notorious, exclusive and actual possession of the Disputed Property and were the only persons to occupy, maintain or otherwise make use of the Disputed Property during that time frame.

17. In 2010, Plaintiff began leasing the Estes Property from the Hopes and in 2013, Plaintiff purchased the Estes Property from the Hopes.

18. Maxwell Hope informed Plaintiff that the Estes Property included property on both sides of Little Antietam Creek and specifically pointed out the Disputed Property as being part of the Estes Property. At the time there was an old fence on the Disputed Property that forms part of the Shared Boundary and which separated the Estes Property from the Holder Property. Mr. Holder has admitted to removing that fence.

19. From 2010 through 2018, Plaintiff, his family, and his invitees were the only persons to use, maintain or otherwise occupy the Disputed Property.

20. From at least 1993 through 2018, a period of 25 years, Plaintiff and his predecessors satisfied the elements of adverse possession with respect to the Disputed Property by actually, openly, notoriously, hostilely, visibly and adversely possessing the Disputed Property, maintaining same, paying taxes on same, and generally using and occupying the Disputed Property in the normal manner that similar property is used by a landowner.

21. While I have requested that Mr. Holder provide me with some proof that he has a valid claim to part of my property, Mr. Holder thus far has not presented any

evidence to refute Mr. Frederick's opinion or to raise a dispute to the fact that Mr. Frederick's plats followed the courses and distances contained in the Holder and Estes chains of title.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this document are true.

Date : 5-11-2021

Benjamin Estes

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

Benjamin Estes

Plaintiff

v

Justin Holder, et al.

Defendant(s)

Case No. C-21-CV-20-000430/130

****

REPLY OPPOSITION TO JUSTIN HOLDER'S MOTION FOR SUMMARY JUDGEMENT – COUNT IV EJECTMENT

The Defendant, in proper person, replies to Plaintiff Benjamin Estes's Opposition to Defendant Justin Holder's Motion for Summary Judgement – Ejectment Count IV, and says:

I. OVERVIEW.

Defendant Justin Holder has made motion before the Honorable Court for Partial Summary Judgment of Count IV, and does prey the Honorable Court will find Judgment in his favor. The Plaintiff has chosen to utilize the valuable time of the Honorable Court to again muddy the waters and create confusion with 10 exhibits, ambiguity, and utter nonsense relying on a survey as title, when in deposition April 27th, 2021 Expert Surveyor Fred Fredericks unambiguously stated that a survey is an opinion, and He was afforded no, I mean none, title work when conducting the surveys. The Plaintiff has produced title back to 1990 via 2 confirmatory deeds, 2 plats, and 1 deed from his predecessor dated November 13th, 1990, "the 1990 deed" (exhibit 6 Plaintiff Opposition). The "1990 deed" page 4 located at Liber 984 Folio 1005 of Washington County Land Records, unambiguously states in the description of the property to be conveyed, **thence along the west side of the creek AND along lands of Harry C. Hutzell, JR (Liber 408 Folio 137).** Harry Hutzell was the predecessor to Uncle Eddies brokedown palace, LLC.

Confirmatory deed located at Liber 6488 Folio 345 et seq., spells out in detail every conveyance and the complete title chain to all Lands claimed by Uncle Eddies brokedown palace, LLC as far back as 1832 with indenture from David Hess of Montgomery, Ohio to Samual Cost, deed N. N. 520, ("N. N. 520 deed") of the Washington County Land Records. In the "N. N. 520 deed" the land conveyed is described as:

Beginning for the first part at a stone standing at the end of the first line of that part of the aforesaid resurvey on "Fellfoot Enlarged" laid off for George Geeting [NN 516 (1832) OO 356 (1833)] and running thence
N26E 23p
N71E 58p
N23E 26p to a stone standing at the end of the line of Fellfoot Enlarged then
N77E 8p to Little Antietam Creek, then down said Creek the nine following courses:
N22E 17p (note this call and the following calls are simalar to the calls in the November 13th, 1990 Plaintiff deed referred to as Exhibit 6 in his opposition. Mr Frederick explained the approximate 3 degree variance on bearing as the difference between true north and magnetic north)
N31E 9p
N10.5E 11.5p
N19W 5.5p
S80W 7p
S27W 14.75p
S74W 6p
N53.5W 22p
S4.5W 23p
S43W 6p
S32W 54p
N71W 27.5p into the center of the Turnpike Road and with the center of the said Road
S28W 37.5p to the end of the second line of that part of the aforesaid land laid off for George Geeting and with the said

second line reversed to the beginning containing 20.75 acres

Plaintiff exhibit 4 in the Opposition to this Motion for Summary Judgment is plat 4040 filed in the Land Records. A careful study of said plat 4040 in the area Plaintiff describes as the tip of the Peninsula shows the utter atrocity of the Plaintiff's argument, by the ridiculous shape of the land created by following the courses and distances rather than monuments.

In the Standard section I will lay out by law the priority of the calls in a deed as being first priority to an adjoiner, such as the "along lands of Harry Hutzell, Jr" verbage in the November, 13th "1990 deed" of the Plaintiff's predecessor. Second priority is monumentation, “along the west side of the creek” verbiage in the November, 13th "1990 deed" of the Plaintiff's predecessor. Lastly the surveyor would use courses and distance which matter of factly Plaintiff pointed out in “fact 16” of his opposition, I will again lay out the legal standard for Grantor Intent as the center or “thread” of the stream, when a stream is the monument in section III Standard. As such Uncle Eddies brokedown palace is the record title holder, regardless of the courses and distances depicted on a plat/survey, to all lands west of the “thread” of the Little Antietam Creek by title chain notoriously spelled out on deed Liber 6488 Folio 345 et seq. Of Washington County Land Records. These deeds have been provided to Plaintiff on Febuary 14th, 2020, and referred to regularly in conversation with Plaintiff.

In *Hines v. Symington,* 137 Md. 441, 446, it was said: "**This Court has decided that the possession of part of a tract of land by the rightful owner is constructive possession of the whole, as against one in possession of a part and claiming the whole under color of title, except as to the part actually occupied by the claimant."** The statement was based on the decision in *Schlossnagle v. Kolb,* 97 Md. 285, 292. There the Court said: **"In this kind of mixed constructive possession the legal seisin is according to the title. Title draws possession to the owner"**, and then adopted from 3 *Washburn on Real Property,* Sec. 1986, the statement that "* * * as against the owner in occupation adverse possession under color of title is of no avail as a foundation of title. This is true even if the owner go into occupation of a part of his land after the disseisin has commenced. The running of the statute will thereby be stopped as to so much of the land as was constructively 295*295 possessed and will be restricted to that in actual possession." See also *Hunnicutt v. Peyton,* 102 U.S. 333, 26 L.Ed. 113. [Emphasis Added]

Goen v. Sansbury, 149 A. 2d 17 - Md: Court of Appeals 1959

Immediately proceeding the above citation the Court of Appeals explained:

“**The principles of law that control the case are well established.** The Pumphreys showed a valid record title to the area in controversy and that they were in actual possession of a part of the whole land described in their deed. Mrs. Sansbury showed but color of title. **Generally, one who has color of title, like one who has actual title, has constructive possession of the land within the outlines of his title, although he actually occupies only a part of it. However, one who enters upon the land of another, though under color of title, gives no notice to that other of any claim, except to the extent of his actual occupancy. Thus, if a true owner be in actual possession of part of the whole land to which he has record title, he is in constructive possession of all of the land which is not actually possessed by another who claims through color of title, and this although the owner's actual possession is not within the limits of the land claimed by the other.** This result has been reached by the cases because **both parties cannot be seised at the same time of the same land under different titles** and the law adjudges, therefore, the seisin of all that is not in **the actual occupancy of the adverse party to him who has the better title**. “[Empahasis Added]

Goen v. Sansbury, 149 A. 2d 17 - Md: Court of Appeals 1959

Furthermore the Plaintiff is relying solely on a survey and bald statement in affidavit of possession that Plaintiff and predecessor were in “actual possession” does not meet the statutory requirements for Adverse Possession. Jurisprudence in the Standards section will set out clearly the legal standard to meet the required elements of possession for the Statutory Period required by Law to obtain Claim to Right. The Plaintiff has not established any notoriety of his claim, admittedly only posting the **East bank** of the Little Antietam Creek with No Trespassing Signs. The Plaintiff has not enclosed the area, and excluded others from the area, nor provided any proof whatsoever of enclosure notoriety or exclusive dominion in the facts section of opposition or the affidavit. Per the Rules of Civil Procedure, an affidavit must contain “Personal Knowledge” not inadmissible "hearsay" knowledge:

"**(c) Form of Affidavit.** An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." *Rule 2-501 - Motion for Summary Judgment*, Md. R. Civ. P. Cir. Ct. 2-501

If it was as simple as making a drawing and filing it in the Land Records and magically you get title to Land outside your deed chain I could only imaging the backlog of Real Property disputes that would be beforew the Honorable Court. While the Law of Record title is Harsh, it is the Law of the Land:

"The law is well stated in the case of *Knouff v. Thompson*, 16 Pa. 357, 364 has placed his written title on record has given the notice which 321 *321 every person is bound to know and respect. The law does not require him to go further. But if he speaks or acts, it must be consistent with his recorded title. The law distinguishes between silence and encouragement. Whilst silence may be innocent and lawful, to encourage and mislead another into expenditures on a bad or doubtful title would be a positive fraud, that should bar and estop the party, the author of that encouragement and deception, from disturbing the title of the person whom he misled, by any claim of title in himself.' And this has the support of decisions in a number of states. *Olden v. Hendrick,* 100 Md. (sic. Mo.) 533, 13 S.W. 821 ; 21 *Corpu* Md., pages 225-226 of 189 Atl.).

Savonis v. Burke, 216 A. 2d 521 - Md: Court of Appeals 1966

The Plaintiff and or Attorney would have been best served with a competent title search, prior to filing of the Complaint. The Plaintiff has stated in footnote 4 of page 5 of Plaintiff Opposition Defendant Justin Holder requires title to the King or Patent, this is correct to the extent title must be proven to the "master parcel" in which all lands in dispute were first carved away. The Plaintiff must recover on the strength of his own title or possessory interest, and that he failed to show any possessory interest in the land alleged to have been trespassed.

II. FACTS.

A. Stated in Defendant's original motion and remain relevant and constant.

III. STANDARD.

A. Grantor Intent when Roads and Streams are the Monumnet

Md. Ann.Code, Art. 21 § 5-114 (1957, 1973 Repl.Vol.) provides:

Any deed, will, or other instrument which conveys land in this State, binding on any street or highway, or when any street or highway shall be one or more of the lines thereof, shall be construed to pass to the devisee, donee or grantee 766 therein, all the right, title, and interest of the devisor, donor, or grantor in the street or highway; provided, however, to the extent the devisor, donor or grantor owns other land on the opposite side of the street or highway, then the deed, will, or other instrument shall be construed to pass the right, title, and interest of the devisor, donor, or grantor only to the center of that portion of the street or highway upon which the two (or more) tracts co-extensively bind. The foregoing provisions shall be inapplicable in either of the above instances if the devisor, donor or grantor shall in express terms in the writing by which the devise, gift or conveyance is made, reserve to himself all the right, title and interest to the said street or highway.

See 301 Md. 679, 687, 484 A.2d 630 (1984) *("This statute, which applies to private and public streets, extends the common law presumption that title to the center of a binding street passes to the grantee.") (citations omitted). This statute was later recodified at Md. Code (1981 Repl.Vol.), R.P. § 2-114, effective July 1, 1974, which provided as follows:*

Unless a contrary intention appears in the deed, will, or other instrument, if any deed, will, or other instrument grants or bequeaths land binding on any street or highway, or if any street or highway is one or more of the lines of the land, the deed, will, or other instrument passes to the legatee, donee, or grantee, all the right, title, and interest of the testator, donor or grantor in the street or highway. Except that to the extent the testator, donor, or grantor owns other land on the opposite side of the street or highway, the deed, will, or other instrument passes the right, title, and interest of the testator, donor, or grantor only to the center of that portion of the street or highway on which the two or more tracts coextensively bind.[15]

See 301 Md. at 686 n. 1, 484 A.2d 630 .

In 184 Md. 520, 526, 41 A.2d 473 (1945), *the Court of Appeals explained that Art. 21, § 5-114, "provides that any conveyance binding upon a highway carries to the grantee title to the center thereof, in the absence of an express provision to the contrary. This applies to a private as well as a public way. The statute merely extends a presumption that was recognized at common law."*[16] 767 (Citations omitted). In 133 Md. 1, 11-12, 104 A. 461 (1918), *the Court of Appeals explained:*

"Reasons for These Rules — **The natural presumption where a deed conveys land bordering on a stream or highway is, that the grantor means to convey what he owns, and not to reserve a strip of land of no value to him**, but the loss of which to the grantee might be productive of great injury. He has power by apt words to reserve what and as much as he pleases, or so to frame the language of his conveyance as to limit the land conveyed to the line of the stream or highway, without extending further, and in all such cases, courts are bound to give effect to his expressed intention. But in the absence of words showing such an intention, it is not presumed that the grantor intended to retain in himself the fee to the street or stream when he has parted with the adjoining land. Therefore it may be said to be a universal rule, that a deed giving a stream as a boundary will convey title to the center of the stream or to low or high water mark, *depending upon how far the grantor's title extends.* **By such a description the grantor will convey all that he owns, unless a contrary intent appears from the language of the deed.**

The deed is taken most strongly against the grantor in the application of this rule and courts will not favor the presumption that he has retained title to the bed of the stream." [Emphasis Added]

ANNAPOLIS ROADS v. Lindsay, 45 A. 3d 749 - Md: Court of Special Appeals 2012

B. Priority of Calls in A Deed

″As a general principle, descriptions of quantity are \`considered inferior′ to other forms of descriptions, including 10*10 \`calls for courses and distances.′... \`Quantity is ordinarily not controlling, unless there are no calls for monuments or for courses and distances set out in the deed.′ ...
″Moreover, a description of quantity is even less authoritative if it contains qualifying terms, such as \`more or less.′[[7]]... In Brodsky v. Hull, 196 Md. 509, 77 A.2d 156 (1950), the Court of Appeals stated:
\`It is a firmly established rule in this State that where it appears by definite boundaries, or by words of qualification, such as ″more or less,″ in a contract of sale that the statement of the quantity of land is mere estimation and description, and not of the essence of the contract, the buyer takes the risk of quantity, and is not entitled to an abatement of price on account of a deficiency, in the absence of fraud.′

[Brodsky, 196 Md. at 514, 77 A.2d at 158.] ...

″**Calls to monuments, both natural and artificial, are the most reliable means of determining the proper location of boundaries.** [4 Herbert T.]Tiffany [& Basil Jones, Real Property] [] § 994 [(1975, Supp.2006)]. **Moreover, \`[t]he line of an adjacent tract, if known or established, may as well be a call in a deed as a natural object.′** Dundalk Holding Co. v. Easter, 195 Md.[488,] 495[, 73 A.2d 877, 879 (1950),].... **Indeed, a call to an adjoining boundary controls over most other methods of description.**...
″In our view, therefore, the latter description, which is based on calls to adjoining boundaries, is of greater reliability. The deed patently states that Parcel 146 is 64 feet along what is now Elm Street. That language is not ambiguous on its face, and therefore we must assume it expresses the intent of the parties to the deed. That intent can easily be applied to the present boundary dispute. The western boundary of Parcel 146, where it abuts Parcels 236, 292, and 152 is undisputed. Thus, the eastern boundary of Parcel 146, i.e., the boundary at issue, is 64 feet from the western boundary of Parcel 146.″ (Footnotes added.) (Some citations omitted.) [Emphasis Added]

Union United v. Burton, No. 2744, slip op. at 17-23 (July 18, 2007).

More than a half-century ago, we reiterated the same principles in respect to matters of survey and boundary line disputes. We said in Dundalk Holding, supra, as follows:
″The issue is a narrow one, involving merely a problem of conflicting surveys. The issue is fundamentally one of fact and the established rules as to preference are simply guides to ascertain the intention of the parties. **Calls for monuments, natural or artificial, generally prevail over courses and distances.** The line of an adjacent tract, if known or established [or undisputed], may as well be a call in a deed as a natural object....
″Whatever doubts may exist as to the location of the 25 perch line in the Marx 11*11 deed, it seems clear that the alternate call to the southwest boundary of the Gulf Oil Corporation lot cannot be disregarded.... If the parties adopted

that as a fixed point of reference it is immaterial whether it was correctly located by the City in the first instance."
Dundalk Holding 195 Md. at 494-95, 73 A.2d at 879.
We agree completely with Judge Kenney's statement of the applicable law and his assessment for the Court of Special Appeals of the correct boundary between Parcels 144 and 146.
Accordingly, we shall remand this case to the Circuit Court for Prince George's County, with directions to the Circuit Court to enter a declaratory judgment that the boundary line between Parcels 144 and 146, the boundary line at issue in this case, is situate 64 feet easterly of the undisputed western boundary line of Parcel 146, i.e., the boundary line between Parcel 146 and Parcels 236, 292, and 152. [Emphasis Added]

Union United Methodist v. Burton, 948 A. 2d 1 - Md: Court of Appeals 2008

C. Adverse Possession

In order to establish title by adverse possession, "a claimant must show continuous possession of the property for 20 years in an **actual, open, notorious, exclusive, and hostile manne**r, under claim of title or ownership." *Barchowsky,* 105 Md.App. at 241, 659 A.2d 347; *see* *Costello v. Staubitz,* 300 Md. 60, 67, 475 A.2d 1185 (1984); *East Washington Railway Co. v. Brooke,* 244 Md. 287, 294, 223 A.2d 599 (1966); *Goen v. Sansbury,* 219 Md. 289, 295, 149 A.2d 17 (1959); *Miceli v. Foley,* 83 Md.App. 541, 552, 575 A.2d 1249 (1990). In evaluating a claim, the pertinent inquiry is whether the claimant has proved the elements **"based on the claimant's `objective manifestation' of adverse use, rather than on the claimant's subjective intent."** *Barchowsky,* 105 Md.App. at 241, 659 A.2d 347 (quoting *Miceli,* 83 Md.App. at 552, 575 A.2d 1249). **Moreover, the claimant bears the burden of proof.** *Costello,* 300 Md. at 67, 475 A.2d 1185; *see* *Hungerford v. Hungerford,* 234 Md. 338, 340, 199 A.2d 209 (1964). [Emphasis Added]

Porter v. Schaffer, 728 A. 2d 755 - Md: Court of Special Appeals 1999

Although the parties have not addressed the issue, we note that **"clear proof"** as it is used in *Stewart* and *Polk* does not entail proof by "clear and convincing" evidence. The Court of Appeals has "consistently applied the *preponderance of the evidence* standard in cases involving private property ownership." *Urban Site Venture II Ltd. Partnership v. Levering Assocs. Ltd. Partnership,* 340 Md. 223, 229, 665 A.2d 1062 (1995)(Emphasis added). *See, e.g.,* *Dreisonstok v. Dworman Building Corp.,* 264 Md. 50, 58, 284 A.2d 400 (1971)(ejectment); *Stottlemyer v. Kline,* 255 Md. 635, 638, 259 A.2d 52 (1969)(trespass); *Miceli v. Foley,* 83 Md.App. 541, 562, 575 A.2d 1249 (1990)(adverse possession).

The author says in 5 Thompson, *Commentaries on the Modern Law of Real Property,* § 2552, at 572-73 (Grimes repl. 1957):

"Possession by the adverse claimant must be uninterrupted for the full statutory period, for to break effectively the possession at any time before the period has fully expired will arrest the running of the statute. **The moment the running of the statute of limitations is interrupted the law restores the possession to the holder of the legal title, and the claimant by adverse possession must begin de novo.** Upon interruption of the possession 395*395 before completion of the statutory period, the possession of the true owner constructively intervenes, and should the claimant resume possession, the statute of limitations begins to run at the date of such resumption, and must run for the full statutory period thereafter in order to give the claimant title. If the possession be interrupted, either by fraud or force, or by process of law, the statute begins to run only from the time of reentry." [Emphasis Added]

Rosencrantz v. Shields, Inc., 346 A. 2d 237 - Md: Court of Special Appeals 1975

Furthermore a survey is not compelling evidence of possession:

In *Maysville & B.S.R. Co. v. Holton,* 100 Ky. 665, 39 S.W. 392*392 27 (1897), the court held that the making of surveys on behalf of a railroad which had obtained a right of way by deed failed to establish reentry sufficient to interrupt the continued and actual adverse possession of the occupants. Before the holder of record title can regain what he has lost, the court said, at 29, "[h]e must assert his claim notoriously and openly, or perform some act that will reinstate him in possession." The court concluded:

"The mere entry for the purpose of survey, or to drive down stakes, is not sufficient to divest the occupant of title who holds the possession and claims the property, or to give notice to the occupying claimant that the company was asserting the right of way over his farm." [Emphasis Added]

Rosencrantz v. Shields, Inc., 346 A. 2d 237 - Md: Court of Special Appeals 1975

IV. ARGUMENT.

A. Plaintiff Has NOT Met His Burden.

There is little need to discuss the general legal principles that apply in cases of adverse possession. In *Gore v. Hall,* 206 Md. 485, 112 A.2d 675 (1955), the Court of Appeals stated the rule very succinctly when it said, at 490:

"In order to establish title to land by adverse possession under the Statute of 21 James I, ch. 16, which is in force in Maryland, the claimant must show that such possession was actual, notorious, exclusive, hostile, under claim of title or ownership, and continuous or uninterrupted for the period of twenty years. 2 *Alexander's British Statutes, Coe's Ed.,* 599-616; *Peper v. Traeger,* 152 Md. 174, 181, 136 A. 537; *Tamburo v. Miller,* 203 Md. 329, 100 A.2d 818."

In *Goen v. Sansbury,* 219 Md. 289, 149 A.2d 17 (1959), the Court said, at 295:

"To establish adverse possession, a claimant must show that the possession was actual, open, notorious, exclusive and continuous or uninterrupted for the statutory period of twenty years. *Bishop v. Stackus,* 206 Md. 493, 498; *Peper v. Traeger,* 152 Md. 174, 181."

Applicable statutory law, at the time of the entry upon the disputed area by the surveyors for Shields, and at the time 388*388 the trespass suit was filed, was found in Code, Article 57, Section 3A, which said, in part:

"No person shall commence an action for the recovery of any corporeal estate in land, leasehold or freehold, or the possession thereof, or make any entry thereon, unless such action is commenced or entry made within twenty years after the right to commence such action or make such entry shall have first accrued to himself or to the person or persons under whom he claims * * *."[1]

Rosencrantz v. Shields, Inc., 346 A. 2d 237 - Md: Court of Special Appeals 1975

The Plaintiff has not established chain of title to any lands West of The Little Antietam Creek, nor an intention of a predecessor in either title chain to expressly retain land underwater, or divest the Grantee of Riparian rights. The access to water under the Doctrine of Riparian rights is the Law, this right to water is appurtenant, and runs with the land, giving riparian owners the benefits of accretion and recession, and subjecting them to the reliction and submersion there-of, in other words les naturel. When a stream is the monument the Grant of Land is determined by law to be to the center or "thread" of the monument, and for better or worse his land is subject to the law of nature as the water runs past.

Therefore the Plaintiff has not met his burden, failed to substantiate with facts the requirements for "actual possession", and the Land is Seisen by the party whom holds better title. The Defendant has asked over 188 Request for Admissions in order to obtain any and all evidence of possession and or title in the land that is in dispute. Plaintiff has only provided the evidence as stated in Defendant Affidavit in original Motion for Summary Judgment. While Plaintiff has provided some "hearsay" facts in Plaintiff Affidavit as to adverse possession, "hearsay" would not be admissible in court and therefore precluded under rule CP 2-501(c). The Honorable Court must require a higher standard than bald claims, hearsay assertions, and generic claims of possession by Plaintiff such as

"Plaintiff was in possession of all the land on his plat". The Plaintiff has not made a Prim a-facia case for Possession, or ejectment and has merely proved Plaintiff may have successfully trespassed on a few occasions prior to April 10th, 2018.

V. CONCLUSION

The Plaintiff's claim to the small sliver of land on the west bank of the Little Antietam Creek is not based in law, and has not been supported by any relevant facts. The 1832 "Master Parcel" deed located at N. N. 520 unambiguously states the Grantor's intent to follow 9 courses around the creek in the Defendant Uncle Eddies brokedown palace, LLC predecessor title chain. Plaintiff has not provided any substantial evidence of adverse possession. There is no dispute to any material facts. Summary Judgment will reduce the totality of the matters to be litigated before the Honorable Court. It is in the interest of Judicial economy to decide Count IV Ejectment in partial Summary Judgement.

Therefore Defendant respectfully and humbly preys the Honorable Court to find in his favor on Count IV of the complaint Ejectment as the Plaintiff **has not and can not meet his burden.**

Respectfully submitted,

Justin K. Holder

Justin Holder, Pro Se
Jholder2004@gmail.com
Tel. 240-356-2008

Defendant

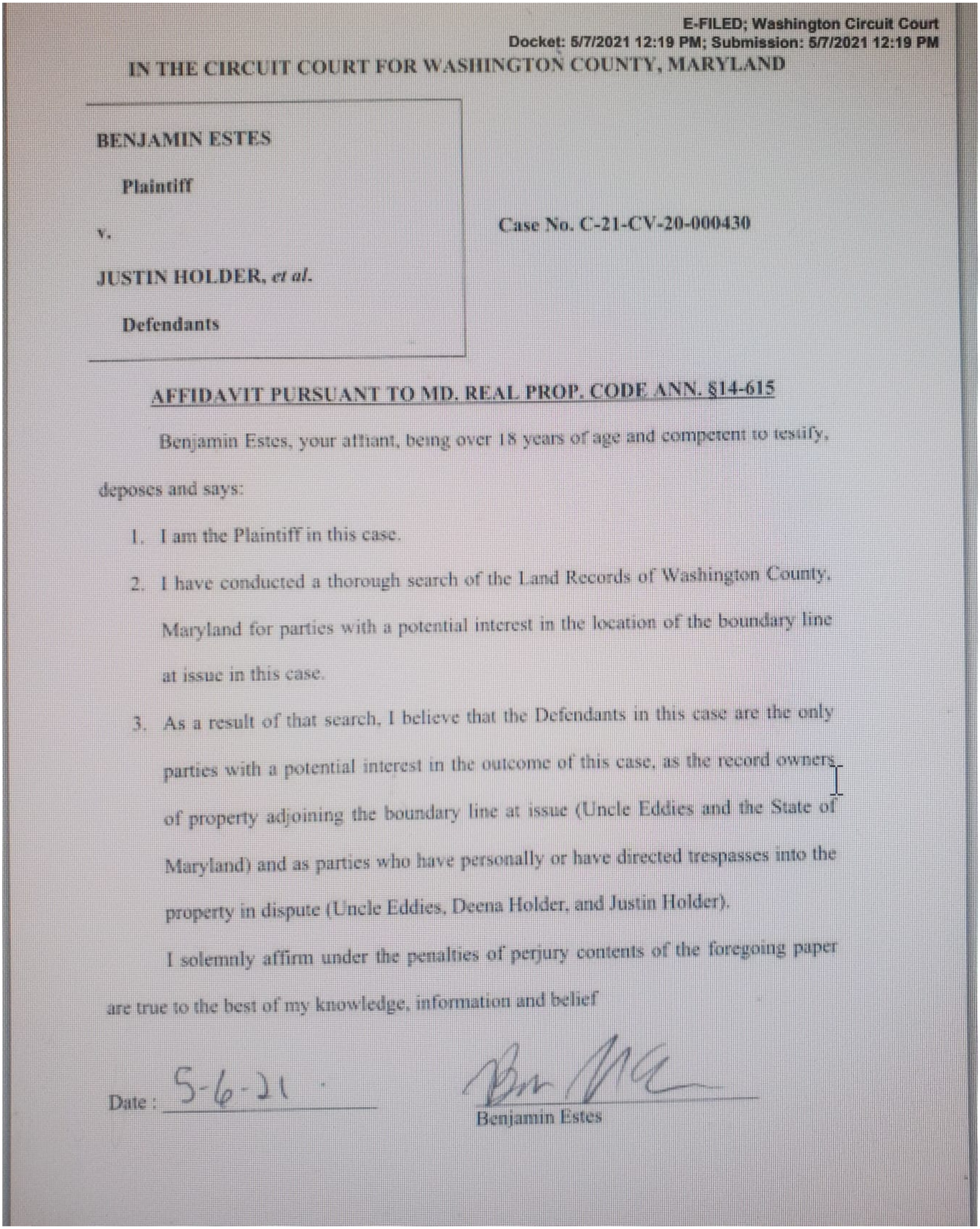
Certificate of Service

I hereby certify that on this 12th day of May, 2021, the foregoing paper filed via MDEC and thus served electronically upon all registered parties, including:

Brendan Callahan, Esq.
Justin Holder
Matthew Ruble, Esq.
Robert L. Kline, III, Esq.
Talley Kovac's, Esq.
Aaron Neal, Esq. Plaintiff

Justin K. Holder

Justin Holder, Pro Se



E-FILED; Washington Circuit Court
Docket: 5/7/2021 12:19 PM; Submission: 5/7/2021 12:19 PM

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, *et al.*

Defendants

Case No. C-21-CV-20-000430

AFFIDAVIT PURSUANT TO MD. REAL PROP. CODE ANN. §14-615

Benjamin Estes, your affiant, being over 18 years of age and competent to testify, deposes and says:

1. I am the Plaintiff in this case.
2. I have conducted a thorough search of the Land Records of Washington County, Maryland for parties with a potential interest in the location of the boundary line at issue in this case.
3. As a result of that search, I believe that the Defendants in this case are the only parties with a potential interest in the outcome of this case, as the record owners of property adjoining the boundary line at issue (Uncle Eddies and the State of Maryland) and as parties who have personally or have directed trespasses into the property in dispute (Uncle Eddies, Deena Holder, and Justin Holder).

I solemnly affirm under the penalties of perjury contents of the foregoing paper are true to the best of my knowledge, information and belief

Date : 5-6-21

Benjamin Estes

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v. **Case No. C-21-CV-20-000430**

JUSTIN HOLDER, ***et al.***

Defendants

MD RULE 2-501(d) AFFIDAVIT

Benjamin Estes, your affiant, being over 18 years of age and competent to testify, deposes and says:

1. I own Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756, Tax ID No. 19-013316 (the "Estes Property").
2. To the best of my knowledge, the Estes Property does not share a boundary line or otherwise adjoin the property owned by Jeffrey Young.
3. I have reviewed Justin Holder's "Bill Quia Timet" and I am unable to decipher what it is that he is requesting and how it would have any effect on the Estes Property or the disputes in this lawsuit.
4. To the extent that Mr. Holder is able to articulate that the Bill Quia Timet does, in fact, request some relief that would effect the Estes Property or the disputes in this lawsuit, I would need discovery to obtain facts essential to justify my opposition to whatever it is that Mr. Holder is requesting.
5. Mr. Holder's position regarding the location of the "stone" marking the boundary line between his property and Jeffrey Young's property appears to be based on

testimony or other information from surveyors Frederic Frederick and George Nagel.

6. Mr. Frederick was deposed on April 27, 2021 and I do not believe that he gave any testimony relating to the location of any stone that sits on a shared boundary between lands of Jeffrey Young and lands of Mr. Holder.
7. I have not seen any other evidence from Mr. Frederick regarding any such stone.
8. I caused a subpoena *duces tecum* to be served on George Nagel. I have not discovered anything in Mr. Nagel's document production which indicated (1) the location of the stone at issue in the Bill Quia Timet or (2) that any such stone had any bearing on the issues in this case.
9. To the extent that there is additional evidence in the possession of Messrs. Frederick or Nagel regarding Mr. Holder's "stone", I will require the opportunity to conduct further discovery to obtain same such that I can justify an opposition to the Bill Quia Timet.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this document are true.

Date : 5-18-21

Benjamin Estes

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY MARYLAND

JUSTIN HOLDER	*	CASE NO.: C-21-CV-20-000371
Defendant	*	And
	*	CASE NO.: C-21-CV-20-000430/130
v. Benjamin Estes, Jeffrey Young, et al.	*	
Plaintiff(s)	*	

* ** *

Bill Quia Timet

Now Comes Justin Holder, in proper person and does humbly make Petition to the Honorable Court to prey Bill Quia Timet. Petitioner Justin Holder offers bond of $2500 and my word that my cause is that of Judicial Economy and Good Faith. I offer Bond to the Honorable Clerk to pay cost as the clerk deems appropriate, in holding a hearing of my Bill Quia Timet at the Epicenter of all Matters relevant to the Litigation in Circuit Court of property line disputes in Case(s) C-21-V-20-000371/130/430, Benjamin Estes/Jeffrey Young et al. v. Justin Holder, et al.

That Petioner's only request of the Honorable Court is to Decide the Law as Harsh at it may be, and Petioner will have his equity as Harsh at that may be.

In Fear and Aprehension of

(Standing)

Defendant is "Stakeholder" with no direct coarse of action to Defend his rights and is in fear of loosing 16 years of Liberty and the entirety of his Freehold Estate in Land he is Seisen, if the co Defendants do not vigilantly defend there estate or the Law is not upheld.

The Epicenter of this Matter is Defined in Petitioner's Deed Filed with the Honorable Clerk at Liber 6414 Folio 219 et seq. , as a Stone well placed in Law 2 Centuries prior which Stands Tall and true today, as it did in the year of 1832.

That Petitioner has made his claim Notoriously in Land Records to the Lands in which he is Seison, and preys this court relief from the Economic Injury being inflicted upon him self's and family by the Plaintiff(s). That Petitioner Justin Holder is in "actual possession" and does have exclusive dominion of part of his land, and is therefore in "constructive possession" of the entirety of land described in his Deed Title.

The Petitioner states in Good Faith and the interest of Judicial Economy and Expediency that there is but one Relevant Fact before this court, and the decision of that fact is not a difficult decision at all, as all the evidence the Honorable Court requires is available in the Grantor/Grantee Index, and Kindly provided in Supoena Duces Tecum served on Fox Associates Engineers. That Expert Testimony has been Provided by Expert Surveyor Frederic Frederick in Interpretation of said Deeds on April 27th, 2021.

Petitioner doth humbly request 5 minutes of the honorable courts time in presentation of a 3 minute video record of the April 27th, 2021 Deposition of Expert Frederic Frederick, and the courts review of the Indenture Located at Liber N. N. Folio 520 of the Washington county Land Records.

Petitioner preys the Honorable Courts relief in holding the presentation on the Lands Petitioner is Seison in. Such that the Honorable Court may Look upon the Lands and Monuments as the Honorable Court pleases.

That Deputy States Attorney Joseph Michael requested Defendant to file Petition with Chancellor in Equity before the State would dismiss Criminal Charges of Trespass on the very lands of this dispute. That Defendant need not Plead Equity, Defendant only needs to Plead in Law, and by means of Recorded Title to Lands in which he is Seisen, or co Defendants are Seison.

That Plaintiff Benjamin Estes has filed among other charges; criminal trespass charges against Justin Holder with a picture conspictuously placed in the charging documents, of Defendant Justin Holder standing waist deep in the Waters of the Little Antietam Creek. That Plaintiff Benjamin Estes has filed advertisement claiming Plaintiff as sole right to the waters and fee beneath the Little Antietam Creek in Tax District 19, Keedysville, MD. That in 1632 King Charles of England did bestow upon Cecielius Calvert, Lord of Baltimore the rights of his disciples to fish the waters and dry the fish upon their shores.

Plaintiff(s) has sued the Defendants in complaint for injunctive relief under Real Property Article 14-108, Declaratory Judgment and damages alleging Trespass. Because certain material facts stated herein are not disputed, and because the straightforward application of the law to those facts compels but a single result, the expeditious resolution of these issues will significantly narrow the totality of issues required to be tried to verdict in this matter.

Undisputed Facts

- That Jeffrey Young, Benjamin Estes, Justin Holder, Uncle Eddie's brokedown palace LLC and Deena Holder are neighbors and share boundary lines.

- That the same surveyor has surveyed the properties of 4/5 of the parties named in 1.

- That Plaintiff Benjamin Estes owns real property abutting Plaintiff Jeffrey Young, and said property is benefited by a record title Right of Way, over and through the Lands of Plaintiff Jeffrey Young. More particularly described in Liber 434 Folio 776 et seq. in Washington County Land Records.

- That Defendant's Deena Holder and Uncle Eddies Brokedown palace LLC own Real Property that is Benefited by a record title Right of Way over and through lands claimed by Defendant Justin Holder and Plaintiff Jeffrey Young.

- That this Defendant has been served Interrogatories and answers to Interrogatories and the witness list are remarkably similar and in some cases identical.

- That Benjamin Estes in deposition under Oath on April 30th, 2021 was unable to provide a clear answer as to his possession and our record title metes and bounds in the area in which he abuts Plaintiff Jeffrey Young's property and or possession lines.

- That Benjamin Estes in deposition under Oath on April 30th, 2021 stated the common factor in both lawsuits C-20-CV-20-000430/371 as Justin Holder.

- That on July 30th or 31st, 2021 Tracy Clabaugh, ESQ. and admitted title and easement expert testified unambiguously the Right of Way benefiting Deena Holder and Uncle Eddie's brokedown palace LLC was of record, a valid instrument, and has not been extinguished by express instrument.

- That Justin Holder's Deed located at Liber 6414 Folio 219 et seq. in Washington County Land Records unambiguously states the lands contained therein are subject to the "wagon road Right of way" as described in the deeds of Defendant's Deena Holder and Uncle Eddies brokedown palace LLC, Liber 6468 Folio 345et seq. and Liber 6485 Folio 244 et seq. in Washington County Land Records.

- That the Metes and Bounds description of "wagon road right of way' as described by deed in 1872 Liber wmckk6 Folio 363 of the Washington County Land Records (Master Parcel for Deena Holder and Uncle Eddie) from Aaron Cost and Melinda Cost states the road follows the Cost (Deena Holder and Uncle Eddie's predecessor)/ Keedy (referring to J.H. Keedy a Plaintiff Jeffrey Young predecessor) division line.

- That the Monument (Epicenter) called for at the beginning of Plaintiff Jeffrey Young predecessor Deed at

Liber 434 Folio 776 et seq. in Washington County Land Records is the same monument used in 1832 to locate the boundary of the COST/KEEDY division line described in 'wagon road right of way", and the first monument used to describe lands of Justin Holder's land at Liber 6414 Folio 219 et seq. in Washington County Land Records.

- That the easement benefiting lands of Plaintiff Benjamin Estes recorded after the description of lands of Harry Wickline (Predecessor to Plaintiff Jeffrey Young) on Deed at Liber 434 Folio 776 et seq. in Washington County Land Records, does not contain a precise metes and bounds description.
- That the Monument (Epicenter) that is the beginning of the description of Real Property on Defendant Uncle Eddies brokedown palace LLC's deed has been located by Professional Land Surveyor George Nagel, and begins a shared boundary with Benjamin Estes.
- That Professional Land surveyor George Nagel has properly located the Monument (Epicenter) that is the First call on the Plaintiff Jeffrey Young Predecessor and Defendant Justin Holder deeds, and made plat of same and location of access easement. Deena Holder has recorded access easement in Washington County Land Records at Liber 6485 Folio 244 et seq. 3
- That in Washington County Land Record located at Liber N. N. Folio 520 is deed dated 1832 Granted by David Hess to Samual Cost(Aaron's father) the monument described in paragraph 14 is the beginning of an 8 perch line and the monument described in paragraph 13 is at the end of said line of deed N. N. 520.

LEGAL STANDARD - Bill Quia Timet

- "The principle upon which chancery acts in such cases is that the value of property in land lies in its marketable title and the right to its quiet possession, and **that sometimes justice requires that the owner should not have its worth materially depreciated by the chilling effect, for an indefinite time, of an invalid, although not actively asserted, claim, which, if enforceable, would cause him a loss; and so, he is entitled to have the questions affecting his rights forthwith determined by having the claim immediately established and enforced or his estate made secure against its operation. In this way bills quia timet anticipate and guard against future and contingent injuries and assure the estate of the owner." [Emphasis Added]**

Cherry v. Siegert, 136 A. 2d 754 - Md: Court of Appeals 1957

The scope of relief at common law, under a bill quia timet 476*476 to quiet title or remove a cloud, has probably been somewhat enlarged by Code (1957), Art. 16, sec. 128. Cf. Shapiro v. County Comm., 219 Md. 298, 301. But, unlike the statutes of some states, our statute has not dispensed entirely with the necessity of showing possession, actual or constructive. See Thomas v. Hardisty, supra, and Cherry v. Siegert, 215 Md. 81, 85. That section authorizes a suit in equity to quiet title by a person "being in actual peaceable possession of lands * * * or, in the event said lands be vacant and unoccupied, in constructive and peaceable possession thereof, either under color of title, or under claim of right by reason of his or his predecessor's adverse possession for the statutory period * * *." **The bill in the instant case does not allege that the lands are vacant and unoccupied, nor does it allege any other facts tending to show that there is not an adequate remedy at law, which is sole ground of equity jurisdiction. In this respect the bill is clearly open to demurrer.** [Emphasis Added]

The appellees further contend that the bill is demurrable on the ground that copies of the various deeds, wills and agreements in the complainants' recited chain of title were not filed with the bill. Maryland Rule 170 b does not require that all documents referred to, but not as exhibits, be filed with a bill. (Rule 170 b 2 makes special provision for injunction and receiver cases.) **Under Rule 326, written documents upon which a cause of action is founded, in law or in equity, are required to be filed "upon written demand of the opposite party served upon him within the time allowed for pleading". We find nothing in the present rules to indicate that failure to file documents merely referred to in the complaint, and upon which general relief depends, would open a bill to demurrer.** It is a matter of proof, rather than of the sufficiency of the allegations. That seems to have been the effect of the holding in Warczynski v. Barnycz, 208 Md. 222, 226, although the point was termed "academic" after the trial of the case. **We see no reason, under the present rules, why a demurrer should lie to a bill which states a good cause of action, on this ground, despite intimations to the contrary** in Haldas v. Commissioners of Charlestown, 207 Md. 255, 261, Kahn v. Janowski, 191 Md. 279, 284, and Beachey v. Heiple, 477*477 130 Md. 683, 693. In all those cases it was held that failure to file documents referred to would not preclude general relief, or justify a dismissal of the bill. Where documents are referred to in a bill as exhibits, of course, Rule 170 b requires that copies be filed before process may issue. [Emphasis Added]

Barnes v. Webster, 154 A. 2d 918 - Md: Court of Appeals 1959

The relief sought by the appellee is essentially legal, and clearly available in ejectment. While title to real estate may sometimes be adjudicated in equity on a bill quia timet, this is not such a case because the complainant alleged she was not in possession. Kelly v. Nice, 141 Md. 472, 119 A. 333; Schultz v. Kaplan, supra; Redwood Hotel v. Korbien, 195 Md. 402, 73 A.2d 468. The case of Smith v. Shiebeck, 180 Md. 412, 24 A.2d 795, relied on by appellee, does not support her contention. It is distinguishable, for there irreparable injury from interference with a right of way, without opportunity for timely redress at law, was claimed. Here title to a piece of land is the only matter in issue, and no special circumstances for equitable consideration appear. Where the object of a proceeding is to obtain possession, the remedy is ejectment**. Equity entertains jurisdiction where, although the complainant fears vexatious litigation due to a cloud on his title, he nevertheless cannot sue in ejectment because he is already in possession. The ground of equity jurisdiction in such a case is that being in possession he is denied a remedy at law**. [Emphasis Added]

In the instant case complete relief could be given in the legal forum, and if the appellee should prevail in ejectment this would effectually terminate any cloud on her title which she fears from the recent recording by the appellants of the original agreement between the appellee and Haviland, and of the assignment of that agreement to them. If appellee wished additionally the incidental advantage of a specific declaration, either affirmative or negative in form, as to the status of the recorded documents, that would be available to her under Article 31A, Section 6, 1951 **Code in a proceeding for a declaratory judgment at law, but not by resort to equity.**

Glorius v. Watkins, 102 A. 2d 274 - Md: Court of Appeals 1954

Legal Standard - Declaratory Judgment

Courts and Judicial Proceedings, Title 3 - Courts of General Jurisdiction --
Jurisdiction/special Causes of Action, Subtitle 4
- Declaratory Judgment
§ 3-405. Parties; role of Attorney General

- (1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.

  (2) Except in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding.

- In any proceeding which involves the validity of a municipal or county ordinance or franchise, the municipality or county shall be made a party and is entitled to be heard.

- If the statute, municipal or county ordinance, or franchise is alleged to be unconstitutional, the Attorney General need not be made a party but, immediately

> after suit has been filed, shall be served with a copy of the proceedings by certified mail. He is entitled to be heard, submit his views in writing within a time deemed reasonable by the court, or seek intervention pursuant to the Maryland Rules.

The question before Judge Dwyer, therefore, was one of fact in resolving a boundary dispute. Indeed, the determination of the boundary line in this case (whether along the Existing Fence line as asserted by the Nowaks or some distance west of the Existing Fence as asserted by the Webbs) is a fact-intensive query based on testimonial and/or demonstrative evidence. 594*594 Even counsel for the Webbs stated at trial that he "recogniz[ed] that there are issues of fact here...." As the Nowaks pointed out, "[the] inquiry, by its very nature, must involve comparing the Wolf deed to conditions in the field—e.g., the location and condition of the [Existing Fence], the location of the Private road and County road, the location of other monuments ... [the] topography of the land ... and even the location of surveyors' pins...." **Accordingly, we would consider without deference to the lower court's decision regarding the legal interpretation of a deed only after the proper location of the disputed boundary line has been established by an adequate factual record.** See, e.g., White v. Pines Community Improvement Ass'n, Inc., 403 Md. 13, 31, 939 A.2d 165, 175 (2008); YIVO Inst. for Jewish Research v. Zaleski, 386 Md. 654, 662-63, 874 A.2d 411, 415 (2005) (quoting Nesbit v. Gov't Employees Ins. Co., 382 Md. 65, 72, 854 A.2d 879, 883 (2004)). [Emphasis Added]

Webb v. Nowak, 72 A. 3d 587 - Md: Court of Appeals 2013

"As a general principle, descriptions of quantity are `considered inferior' to other forms of descriptions, including 10*10 `calls for courses and distances.'... `Quantity is ordinarily not controlling, unless there are no calls for monuments or for courses and distances set out in the deed.' ...

"Moreover, a description of quantity is even less authoritative if it contains qualifying terms, such as `more or less.'[[7]]... In Brodsky v. Hull, 196 Md. 509, 77 A.2d 156 (1950), the Court of Appeals stated:

`It is a firmly established rule in this State that where it appears by definite boundaries, or by words of qualification, such as "more or less," in a contract of sale that the statement of the quantity of land is mere estimation and description, and not of the essence of the contract, the buyer takes the risk of quantity, and is not entitled to an abatement of price on account of a deficiency, in the absence of fraud.'

[Brodsky, 196 Md. at 514, 77 A.2d at 158.] ...

"Calls to monuments, both natural and artificial, are the most reliable means of determining the proper location of boundaries. [4 Herbert T.]Tiffany [& Basil Jones, Real Property] [] § 994 [(1975, Supp.2006)]. Moreover, `[t]he line of an adjacent tract, if known or established, may as well be a call in a deed as a natural object.' Dundalk Holding Co. v. Easter, 195 Md.[488,] 495[, 73 A.2d 877, 879 (1950),].... Indeed, a call to an adjoining boundary controls over most other methods of description....

"In our view, therefore, the latter description, which is based on calls to adjoining boundaries, is of greater reliability. The deed patently states that Parcel 146 is 64 feet along what is now Elm Street. That language is not ambiguous on its face, and therefore we must assume it expresses the intent of the parties to the deed. That intent can easily be applied to the present boundary dispute. The western boundary of Parcel 146, where it abuts Parcels 236, 292, and 152 is undisputed. Thus, the eastern boundary of Parcel 146, i.e., the boundary at issue, is 64 feet from the western boundary of Parcel 146." (Footnotes added.) (Some citations omitted.)

Union United v. Burton, No. 2744, slip op. at 17-23 (July 18, 2007).

More than a half-century ago, we reiterated the same principles in respect to matters of survey and boundary line disputes. We said in Dundalk Holding, supra, as follows:

"The issue is a narrow one, involving merely a problem of conflicting surveys. The issue is fundamentally one of fact and the established rules as to preference are simply guides to ascertain the intention of the parties. Calls for monuments, natural or artificial, generally prevail over courses and distances. The line of an adjacent tract, if known or established [or undisputed], may as well be a call in a deed as a natural object....

"Whatever doubts may exist as to the location of the 25 perch line in the Marx 11*11 deed, it seems clear that the alternate call to the southwest boundary of the Gulf Oil Corporation lot cannot be disregarded.... If the parties adopted that as a fixed point of reference it is immaterial whether it was correctly located by the City in the first instance."

Dundalk Holding 195 Md. at 494-95, 73 A.2d at 879.

We agree completely with Judge Kenney's statement of the applicable law and his assessment for the Court of Special Appeals of the correct boundary between Parcels 144 and 146.

Accordingly, we shall remand this case to the Circuit Court for Prince George's County, with directions to the Circuit Court to enter a declaratory judgment that the boundary line between Parcels 144 and 146, the boundary line at issue in this case, is situate 64 feet easterly of the undisputed western boundary line of Parcel 146, i.e., the boundary line between Parcel 146 and Parcels 236, 292, and 152.

Union United Methodist v. Burton, 948 A. 2d 1 - Md: Court of Appeals 2008

Argument - Declaratory Judment of the Monument

That Plaintiff Jeffrey Young has requested complete adjudication and relief from uncertainty, and to question the construction or validity arising under the instrument and may obtain a Declaration of rights in paragraph 5 and 6 of complaint.

- The purpose of the Declaratory Judgment Act as stated in Courts and Judicial Proceedings Article Section 3-402, is to settle and afford relief from uncertainty with respect to rights, status, and other legal relations. The. statute is to be liberally construed and administered (Courts and Judicial Proceedings, Section 3-402).

- The Courts and Judicial Proceedings Article Section 3-406, provides that any person interested under a deed may request the court to determine any question of construction or validity arising under the instrument and may obtain a Declaration of rights, status, or other legal relations under it (Courts and Judicial Proceedings, Section 3-406).

That Defendant Justin Holder is a humble man of little finance, and is appearing before the Honorable Court in proper person.

That upon Declaratory Judgment by the Honorable Court as to the legitimacy of the monument is of the utmost relevance to this matter, and all other matters may expediently move forward as prescribed in Law.

Wherefore:

Wherefore the Defendant humbly requests Declatory Judgement that the Stone described in Deed held by the Honorable Clerk of the Court in the Washington County Land Records Liber 6414 Folio 219 et seq. as the Beginning Stone of Lands of Justin Holder is the same monument as described in title Deeds of the Plaintiff Jeffrey Young's predessor title deeds located at Liber 434 Folio 776 et seq. of the Washington County Land Records.

Verification

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the Undisputed Facts section, 15 facts stated, under the "Undisputed Facts" headings are true and correct.

Justin K. Holder

Justin Holder

AND

I HEREBY CERTIFY that this document does not contain any restricted information.

Justin K. Holder

Justin K. Holder, Pro Se
308 W. Chapline St.
Sharpsburg, MD 21782
(240) 356 - 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May 2021, a copy of the foregoing Bill Quia Timet was served via the MDEC system on:

Brendan M. Callahan, ESQ. Attorney for Plaintiff Benjamin Estes,

Aaron Neal via MDEC Attorney for Plaintiff Benjamin Estes,

Roland David Pembroke via MDEC Attorney for Plaintiff Jeffrey Young,

and

Matthew Ruble via MDEC Attorney for Deena Holder and Uncle Eddies brokedown palace LLC

Justin K. Holder

Justin Holder, Pro Se

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, *et al.*

Defendants

Case No. C-21-CV-20-000430

OPPOSITION AND/OR ANSWER TO JUSTIN HOLDER'S "BILL QUIA TIMET"

The Plaintiff, by and through his attorneys, Mark W. Schweitzer, Aaron D. Neal, and McNamee Hosea, P.A., responds in opposition to and/or Answers Defendant Justin Holder's "Bill Quia Timet", and says:

I. OVERVIEW.

It is not clear what Justin Holder is trying to do with this latest in a series of rambling papers filed in the various actions he is defending. Mr. Holder's Bill Quia Timet (the "Bill") could be viewed as an attempt to file a pleading, a backdoor attempt to consolidate this case with the *Young* case, or a motion for summary judgment in the *Young* case. The core of the Bill appears to be Mr. Holder's proposition that stones described in his chain of title and Mr. Young's chain of title are, in fact, the same stone, and thus show a shared boundary line between their properties. Plaintiff has no idea if that is true or not and, quite frankly, does not care. While it may be to Mr. Holder's benefit to attempt to conflate and confuse the issues in his various litigations, Mr. Holder's desire to drag everyone that he perceives to have wronged him into a single proceeding does not give him the right to do so. Whatever it is that Mr. Holder is attempting to do in filing his Bill has nothing to do with Plaintiff. Mr. Holder's dispute with Mr. Young is already being litigated in the *Young* case and there it should stay. The Bill should be denied as to the Plaintiff.

II. ARGUMENT.

To the extent that Mr. Holder intended the Bill to be in the nature of a motion seeking relief from the Court, that motion is procedurally improper and should be denied. Historically, a Bill *Quia Timet* was an equitable action to quiet title to real property. *See* Cherry v. Siegert, 215 Md. 81 (1957); Jenkins v. City of College Park, 379 Md. 142 (2003); Porter v. Schaffer, 126 Md.App. 237 (1999). In 1955, the *quia timet* action was codified in Art. 16, Sec. 131A, which is now Md. Real Prop. Code Ann. §14-108. Cherry, *supra* at 85. Following the merger of law and equity in 1984, Section 14-108 was amended to remove the reference to a "suit in equity" and to refer instead to the procedural rules in Subtitle 6. *See* Exhibit 1. While the merger did not eliminate equity jurisdiction and an action to quiet title remains an equitable proceeding, the nomenclature is irrelevant – *quia timet* and quiet title are the same thing. Porter, *supra* at 274; *quoting* Thomas v. Hardisty, 217 Md. 523, 530 (1958).

With the definition of *quia timet* settled, the question remains as to what Mr. Holder is trying to do with his filing. If Mr. Holder is actually seeking to quiet title, he would need to file a pleading seeking such relief. However, there is no procedural mechanism for filing a second lawsuit inside an existing lawsuit. While the Maryland Rules provide for the filing of counterclaims, cross-claims and third-party complaints, it is not clear that is what Mr. Holder is trying to do. Rather, Mr. Holder appears to file his Bill in an attempt to form a bridge between this case and the *Young* case as a sort of backdoor way to consolidate the cases in the (likely) event that his "joinder" motion fails. There is no procedural mechanism for consolidating two cases together without leave of court. To the extent that the Bill is simply a backdoor attempt at consolidation, Plaintiff opposes the Bill for the same reasons as it opposed the "joinder" motion, and Plaintiff's opposition to that motion is incorporated herein by reference.

To the extent that Mr. Holder is seeking relief in the form of a declaratory judgment, his motion also fails as a procedural matter. The only mechanisms for obtaining judgments short of trial are Rule 2-501 (summary judgment), Rule 2-611 (confessed judgment), Rule 2-612 (consent judgment) and Rule 2-613 (default judgment). The Bill does not allege an ability to confess judgment, there is no indication of anyone consenting to Mr. Holder's relief (and to be clear, Plaintiff objects to whatever it is that Mr. Holder is requesting), and there has been no pleading served by Mr. Holder upon which a default could be founded.

As such, the only possible mechanism that Mr. Holder could be using to seek relief is summary judgment under Md. Rule 2-501. While Mr. Holder does include a "Verification" relating to the "Undisputed Facts" section, he does not attach any exhibits and does not explain how it is that judgment against Plaintiff would be appropriate in light of the fact that Mr. Holder appears to seek relief solely related to the boundaries of Jeffrey Young's property or the starting point of an easement that he claims over Mr. Young's property. As is set forth more fully in Plaintiff's opposition to the "joinder" motion, Plaintiff's land does not share any boundaries with Mr. Young's property and the location of those boundaries cannot possibly affect Plaintiff. In the event that the Court deems the Bill an attempt to seek relief that actually does effect Plaintiff's property (either via pleading or motion) and Mr. Holder is able to articulate what relief he is seeking related to Plaintiff's property, Plaintiff has attached an affidavit pursuant to Md. Rule 2-501(d) as Exhibit 2.

As relief, Mr. Holder requests that a stone (the "Stone") identified in a deed describing Mr. Holder's property recorded in Liber 6414 at folio 219 be declared to be the same monument identified as the "beginning stone" in a deed describing Jeffrey Young's property recorded in Liber 434 at folio 776. *See* Bill at p.11. To support that proposition, Mr. Holder contends that surveyors

Frederic Frederick and George Nagel have previously identified the location of the Stone. Mr. Holder does not provide affidavits, deposition transcripts, plats, or any other evidence showing (1) the location of the Stone or (2) how it has any effect on Plaintiff's title or the disputes in this case.[1] If Mr. Holder wants to seek a partial summary judgment as to the location of a stone that he thinks governs the boundary line between his property and property owned by Jeffrey Young, he needs to do so in the *Young* case. Mr. Holder's requested relief has nothing to do with this case and should be denied as to this case.

III. ANSWER.

To the extent that Mr. Holder intended the Bill to be in the nature of a Counterclaim, Cross-Claim or Third-Party Complaint, with the "Undisputed Facts" section intended to constitute the allegations of that pleading, Plaintiff answers as follows:

A. SPECIFIC ADMISSIONS AND DENIALS.

1. Denied.[2]
2. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
3. Denied that Plaintiff owns property abutting the lands of Jeffrey Young. The remaining averments consist of conclusions of law to which no response is required and/or references to recorded documents, which speak for themselves. To the extent that the averments contradict the terms of the written documents, denied.

---

[1] Mr. Holder also makes reference to a different monument which starts the shared boundary line between the lands of Plaintiff and Uncle Eddies Brokedown Palace LLC ("Uncle Eddies"). However, Mr. Holder does not appear to seek relief relating to the location of that monument and it is unclear how he would have standing to do so anyway, as those lands are owned by Plaintiff and Uncle Eddies.

[2] While the paragraphs of the "Undisputed Facts" section are separated by bullet points rather than numbering, the numbers of the corresponding section shall correspond to what would have been the number assigned to the corresponding paragraph, had numbers been used.

4. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
5. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
6. Denied.
7. Denied to the extent that Mr. Holder is inferring that there is some sort of commonality between the *Young* case and this case that would render consolidation appropriate. Admitted that Mr. Holder is a defendant in each case.
8. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
9. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
10. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
11. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
12. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
13. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.
14. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.

15. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied.

B. DEFENSES.

1. Failure to state a claim upon which relief could be granted.
2. Failure to satisfy the requirements of Md. Rule 2-303.
3. Failure to identify a justiciable controversy relating to Plaintiff.
4. Plaintiff reserves the right to assert additional defenses and discovery progresses and in the event that Mr. Holder more clearly identifies what it is that he is attempting to do with his Bill.

IV. CONCLUSION.

Whatever it is that Mr. Holder is attempting to do with his Bill Quia Timet does not appear to be proper, substantively or procedurally. Mr. Holder cannot merge two cases together or shortcut due process by using archaic names for his filings. The Maryland Rules provide mechanisms for the consolidation of cases and assertion of claims for relief. Mr. Holder's Bill Quia Timet is procedurally improper and should be denied if viewed as a motion or dismissed if viewed as a pleading.

Respectfully submitted,

McNamee Hosea, P.A.

/s/ Mark W. Schweitzer
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Attorneys for the Plaintiff

Certificate of Service

I hereby certify that on this 18th day of May, 2021, the foregoing paper filed via MDEC and thus served electronically upon all registered parties, including:

Brendan Callahan, Esq.
Justin Holder
Matthew Ruble, Esq.
Robert L. Kline, III, Esq.
Talley Kovacs, Esq.

/s/ Aaron D. Neal
Aaron D. Neal, Esq.

Exhibit 1

2016 Maryland Laws Ch. 395 (S.B. 509)

MARYLAND 2016 SESSION LAWS

REGULAR SESSION

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

Chapter 395
S.B. No. 509
REAL PROPERTY—ACTIONS TO QUIET TITLE

AN ACT concerning

Real Property—Actions to Quiet Title

FOR the purpose of authorizing a certain action to be brought to establish title against adverse claims to property; establishing that the court is deemed to have possession and control for the purpose of an action under this Act; providing for the venue and the application of certain rules in an action under this Act; establishing requirements for a complaint, an answer to a complaint, naming of defendants, joinder of parties, and service of process in an action under this Act; authorizing the court to take certain actions in an action under this Act; requiring the recording of a certain judgment; providing for the effect of a judgment in an action under this Act; providing for the construction of this Act; making stylistic changes; defining certain terms; and generally relating to actions to quiet title.

BY repealing and reenacting, with amendments,
Article—Real Property
Section 14–108
Annotated Code of Maryland
(2015 Replacement Volume)

BY adding to
Article—Real Property
Section 14–601 through 14–621 to be under the new subtitle "Subtitle 6. Actions to Quiet Title"
Annotated Code of Maryland
(2015 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article—Real Property

<< MD REAL PROP § 14–108 >>

14–108.
(a) Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of ~~his~~ **the person** or ~~his~~ **the person's**

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predecessor's adverse possession for the statutory period, when ~~his~~ **the person's** title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, the person may maintain a suit in ~~equity~~ **accordance with Subtitle 6 of this title** in **the circuit court for the** county where the property ~~lies~~ **or any part of the property is located** to quiet or remove any cloud from the title, or determine any adverse claim.

(b) The proceeding shall be deemed in rem or quasi in rem so long as the only relief sought is a decree that the plaintiff has absolute ownership and the right of disposition of the property, and an injunction against the assertion by the person named as the party defendant, of ~~his~~ **the person's** claim by any action at law or otherwise. Any person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings.

T. 14 Subt. 6 pr. § 14–601

SUBTITLE 6—ACTIONS TO QUIET TITLE

<< MD REAL PROP § 14–601 >>

14–601.

(a) In this subtitle the following words have the meanings indicated.

(b) “Claim” includes a legal or equitable right, title, estate, lien, or interest in property or a cloud on the title to property.

(c) “Holder” means the mortgagee, trustee, beneficiary, nominee, or assignee of record, if any, of a security instrument.

(d) “Property” means real property or any interest in or appurtenant to real property, including fixtures.

(e) “Security instrument” means a recorded mortgage or deed of trust or an assignment of a recorded mortgage or deed of trust.

<< MD REAL PROP § 14–602 >>

14–602.

An action may be brought under this subtitle to establish title against adverse claims to property, including adverse claims described in § 14–108 of this title.

<< MD REAL PROP § 14–603 >>

14–603.

(a) In an action under this subtitle, the court is deemed to have obtained possession and control of the property for the purposes of the action.

(b) This subtitle does not limit any authority the court may have to grant any equitable relief that may be proper under the circumstances of the case.

<< MD REAL PROP § 14–604 >>

14–604.

The Maryland Rules apply to actions under this subtitle, except to the extent they are inconsistent with the provisions of this subtitle.

<< MD REAL PROP § 14–605 >>

14–605.

(a) At the time a complaint is filed, the plaintiff shall send each holder that is not named as a party in the action a copy of the complaint with exhibits and a statement that:

(1) The holder is not a party in the proceeding and any judgment in the proceeding will not affect any claim of the holder; and

(2) If the holder elects to appear in the proceeding, the holder will appear as a defendant and be bound by any judgment entered in the proceeding.

(b) The complaint and statement shall be sent by certified mail, return receipt requested, and by first-class mail to the holder:

(1) At the address set forth in the security instrument for the holder's receipt of notices; or

(2) If no address for the holder's receipt of notices is set forth in the security instrument, at the last known address of the holder.

<< MD REAL PROP § 14–606 >>

14–606.

A complaint under this subtitle shall be verified and shall include:

(1) A description of the property that is the subject of the action, including both its legal description and its street address or common designation, if any;

(2)(i) The title of the plaintiff as to which a determination is sought and the basis of the title; and

(ii) If the title is based on adverse possession, the specific facts constituting the adverse possession;

(3) The adverse claims to the title of the plaintiff against which a determination is sought; and

(4) A prayer for a determination of the title of the plaintiff against the adverse claims.

<< MD REAL PROP § 14–607 >>

14–607.

(a) An answer to a complaint under this subtitle shall be verified and shall set forth:

(1) Any claim the defendant has to the property that is the subject of the action;

(2) Any facts tending to controvert any material allegations of the complaint that the defendant does not wish to be taken as true; and

(3) A statement of any new matter constituting a defense.

(b) If the defendant disclaims any interest in the title of the property in the answer or allows judgment to be taken without answer, the plaintiff may not recover costs.

<< MD REAL PROP § 14–608 >>

14–608.

(a) The plaintiff shall name as defendants in an action under this subtitle the persons having adverse claims to the title of the plaintiff that are of record or known to the plaintiff or reasonably apparent from an inspection of the property against which a determination is sought.

(b) If the plaintiff admits the validity of any adverse claim, the plaintiff shall state the admission in the complaint.

<< MD REAL PROP § 14–609 >>

14–609.

(a) If the name of a person required to be named as a defendant is not known to the plaintiff, the plaintiff shall state in the complaint that the name is unknown and shall name as parties all persons unknown in the manner provided in § 14–613 of this subtitle.

(b)(1) If the claim or the share or quantity of the claim of a person required to be named as a defendant is unknown, uncertain, or contingent, the plaintiff shall state those facts in the complaint.

(2) If the lack of knowledge, uncertainty, or contingency is caused by a transfer to an unborn or unascertained person or class member, or by a transfer in the form of a contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, the plaintiff shall also state in the complaint, so far as is known to the plaintiff, the name, age, and legal disability, if any, of the person in being who would be entitled to the claim had the contingency on which the claim depends occurred before the commencement of the action.

<< MD REAL PROP § 14–610 >>

14–610.

(a) If a person required to be named as a defendant is dead and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant.

(b)(1) If a person required to be named as a defendant is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative, the plaintiff shall state those facts in an affidavit filed with the complaint.

(2) If the plaintiff states in an affidavit under paragraph (1) of this subsection that a person is dead, the plaintiff may join as defendants "the testate and intestate successors of __________ (naming the deceased person), deceased, and all persons claiming by, through, or under the decedent".

(3) If the plaintiff states in an affidavit under paragraph (1) of this subsection that a person is believed to be dead, the plaintiff may join the person as a defendant, and may also join "the testate and intestate successors of __________ (naming the person), believed to be deceased, and all persons claiming by, through, or under the person believed to be deceased".

<< MD REAL PROP § 14–611 >>

14–611.

The court on its own motion or on motion of any party may issue any appropriate order to require:

(1) Joinder of any additional parties that are necessary or proper; and

(2) The plaintiff to procure a title report supported by an affidavit by the person making the search that a complete search of the public records has been performed in accordance with generally accepted standards of title examination for the appropriate period as determined by the court, but not less than 60 years, and designate a place where the title report shall be kept for inspection, use, and copying by the parties.

<< MD REAL PROP § 14–612 >>

14–612.

Any person who has a claim to the property described in a complaint under this subtitle may appear in the proceeding.

<< MD REAL PROP § 14–613 >>

14–613.

In addition to the persons required to be named as defendants in an action under this subtitle, the plaintiff may name as defendants "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to the plaintiff's title, or any cloud on the plaintiff's title to the property".

<< MD REAL PROP § 14–614 >>

14–614.

The court on its own motion or on motion of any party may issue an order for appointment of an attorney to protect the interest of any party to the same extent and effect as provided under Rule 2–203 of the Maryland Rules with respect to individuals not in being.

<< MD REAL PROP § 14–615 >>

14–615.

(a)(1) If, on affidavit of the plaintiff, it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve a summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication in accordance with Rule 2–122 of the Maryland Rules and the provisions of this subtitle.

(2) The order shall direct that a copy of the summons, the complaint, and the order for publication be mailed immediately to the party if the party's address is ascertained before expiration of the time prescribed for publication of the summons.

(b) This section does not authorize service by publication on any person named as an unknown defendant who is in open and actual possession of the property.

<< MD REAL PROP § 14–616 >>

14–616.

(a) If the court orders service by publication, the plaintiff shall:

(1) Post, not later than 10 days after the date the order is issued, a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action; and

(2) File proof that the summons has been served, posted, and published as required in the order.

(b) If the court orders service by publication, the publication shall use the legal description of the property along with its street address, or other common designation, if any.

<< MD REAL PROP § 14–617 >>

14–617.
(a) In all cases the plaintiff shall submit evidence at a hearing before the court establishing the plaintiff's title and the court may hear or take any evidence offered respecting the claims of any defendant, other than claims the validity of which is admitted by the plaintiff in the complaint.

(b)(1) A judgment in an action under this subtitle shall be recorded in the land records of the county in which any portion of the property is located.

(2) The clerk shall index the judgment in accordance with § 3–302 of this article, with the parties against whom the judgment is entered as grantor and the party in whose favor the judgment is entered as grantee.

<< MD REAL PROP § 14–618 >>

14–618.
A judgment in an action under this subtitle is binding and conclusive, regardless of any legal disability, on:

(1) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided; and

(2) Except as provided in § 14–619 of this subtitle, all persons who were not parties to the action and who have any claim to the property that was not of record at the time the action was commenced.

<< MD REAL PROP § 14–619 >>

14–619.
(a) A judgment in an action under this subtitle does not affect a claim in the property or part of the property of any person who was not a party to the action, if, at the time the action was commenced:

(1) The claim was of record; or

(2) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property.

(b) This section may not be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or the plaintiff's successors in interest.

<< MD REAL PROP § 14–620 >>

14–620.

Any relief granted in an action or proceeding directly or collaterally attacking a judgment entered under this subtitle, whether based on lack of actual notice to a party or otherwise, may not impair the rights of a purchaser or encumbrancer for value of the property acting in reliance on the judgment without knowledge of any defects or irregularities in the judgment or the proceedings.

<< MD REAL PROP § 14–621 >>

14–621.

Notwithstanding any other provision of this subtitle, a judgment in an action under this subtitle is not binding or conclusive on:

(1) The State, unless individually joined as a party to the action and State law authorizes the judgment to be binding or conclusive as to its interests; or

(2) The United States, unless the United States is individually joined as a party to the action and federal law authorizes the judgment to be binding or conclusive as to its interests.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.

Approved May 10, 2016.
Effective date: October 1, 2016.

End of Document

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Exhibit 2

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v. **Case No. C-21-CV-20-000430**

JUSTIN HOLDER, *et al.*

Defendants

MD RULE 2-501(d) AFFIDAVIT

Benjamin Estes, your affiant, being over 18 years of age and competent to testify, deposes and says:

1. I own Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756, Tax ID No. 19-013316 (the "Estes Property").
2. To the best of my knowledge, the Estes Property does not share a boundary line or otherwise adjoin the property owned by Jeffrey Young.
3. I have reviewed Justin Holder's "Bill Quia Timet" and I am unable to decipher what it is that he is requesting and how it would have any effect on the Estes Property or the disputes in this lawsuit.
4. To the extent that Mr. Holder is able to articulate that the Bill Quia Timet does, in fact, request some relief that would effect the Estes Property or the disputes in this lawsuit, I would need discovery to obtain facts essential to justify my opposition to whatever it is that Mr. Holder is requesting.
5. Mr. Holder's position regarding the location of the "stone" marking the boundary line between his property and Jeffrey Young's property appears to be based on

testimony or other information from surveyors Frederic Frederick and George Nagel.

6. Mr. Frederick was deposed on April 27, 2021 and I do not believe that he gave any testimony relating to the location of any stone that sits on a shared boundary between lands of Jeffrey Young and lands of Mr. Holder.
7. I have not seen any other evidence from Mr. Frederick regarding any such stone.
8. I caused a subpoena *duces tecum* to be served on George Nagel. I have not discovered anything in Mr. Nagel's document production which indicated (1) the location of the stone at issue in the Bill Quia Timet or (2) that any such stone had any bearing on the issues in this case.
9. To the extent that there is additional evidence in the possession of Messrs. Frederick or Nagel regarding Mr. Holder's "stone", I will require the opportunity to conduct further discovery to obtain same such that I can justify an opposition to the Bill Quia Timet.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this document are true.

Date : 5-18-21

Benjamin Estes

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

Benjamin Estes

Plaintiff

v

Justin Holder, et al.

Defendant(s)

Case No. C-21-CV-20-000430/130

****

Reply to Plaintiff Benjamin Este's Opposition (Bill of Demurrer) to Defendant Justin Holder's Bill Quia Timet

The Defendant, in proper person, replies to Plaintiff Benjamin Estes's Demurrer to Defendant Justin Holder's Bill Quia Timet.

In reply to the Demurrer of Plaintiff requesting that the Honorable Court shall take no cognizance of Defendant Justin Holder's Bill Quia Timet;

Defendant opines it is not the Defendant's bill, but the "stone" the Plaintiff preys the court doth not discover, however the Land Records themselves tell the tale, and the Plaintiff's bill shall not lie upon this HonorableCourt!

I plead only to the Honorable Chancellor of Law to review the title held by the Clerk at Liber 434 Folio 776 Paragraph 3 describing said "stone", and Liber 6414 Folio 223 Paragraph 2 describing said "stone" as "found". The title chain of the lands of Defendant, Uncle Eddie are notoriously recorded in Liber 6468 Folio 347 Paragraph 3 et seq.

The Honorable Court will find the truth and the "stone" at the end of the 3rd course of the metes and bounds description contained in Indenture Liber N. N. 520. The said "Stone" Stands tall in truth upon Mt. Vernon, in Keedysville, Maryland and the Plaintiff fears for the Fraud he has bestowed upon this court! For just 8 perches to the NorthEast lies a stone fallen in the Little Antietam Creek, then down said Creek the nine following courses

............well past the Lands of Plaintiff Benjamin Estes on the East side of said Little Antietam Creek.

As the Plaintiff admits in his demurrer, Summary Judgement is best suited for Defendant's Bill Quia Timet, such that it pleases the court I shall agree with Plaintiff to same. I do humble prey the Honorable Court may decide the fact of the "stone" as laid out in Defendant's Bill.

The Honorable Judge Cathell Presided over the matters of *Jenkins v. City of College Park, 840 A. 2d 139 - Md: Court of Appeals 2003* opining " **In addition, the very purpose of a quia timet action is to resolve clouds on title so to protect the owner of legal title to the property in question.** See *Wathen v. Brown, 48 Md.App. 655, 658, 429 A.2d 292, 294 (1981)*. Regardless of the outcome of a resolution of petitioner's cases to quiet 154*154 title, if respondent's case is not consolidated with those cases, a cloud will remain on the title by virtue of respondent's pending quiet title case. The only way in which to resolve the factual issues and ultimate question of who owns legal title to the property is to have all three cases presented to the same trier of fact within one case. **The cases, therefore, should have been consolidated; to deny the motion to consolidate was an unreasonable and untenable decision.** We therefore hold that the trial court abused its discretion in denying respondent's motion to consolidate. "[Emphasis Added]

Defendant Justin Holder preys upon the Honorable Court to take cognizance of the Land Records as laid out in his Bill Quia Timet, and the facts contained therein and make judgement;

Wherefore the Defendant humbly requests Declaratory Judgement that the Stone described in Deed held by the Honorable Clerk of the Court in the Washington County Land Records Liber 6414 Folio 219 et seq. as the Beginning Stone of Lands of Justin Holder is the same monument as described in title Deeds of the Plaintiff Jeffrey Young′s predecessor title deeds located at Liber 434 Folio 776 et seq. of the Washington County Land Records.

Respectfully submitted,

Justin K Holder

Justin Holder, Pro Se
Jholder2004@gmail.com
Tel. 240-356-2008

Defendant

Certificate of Service

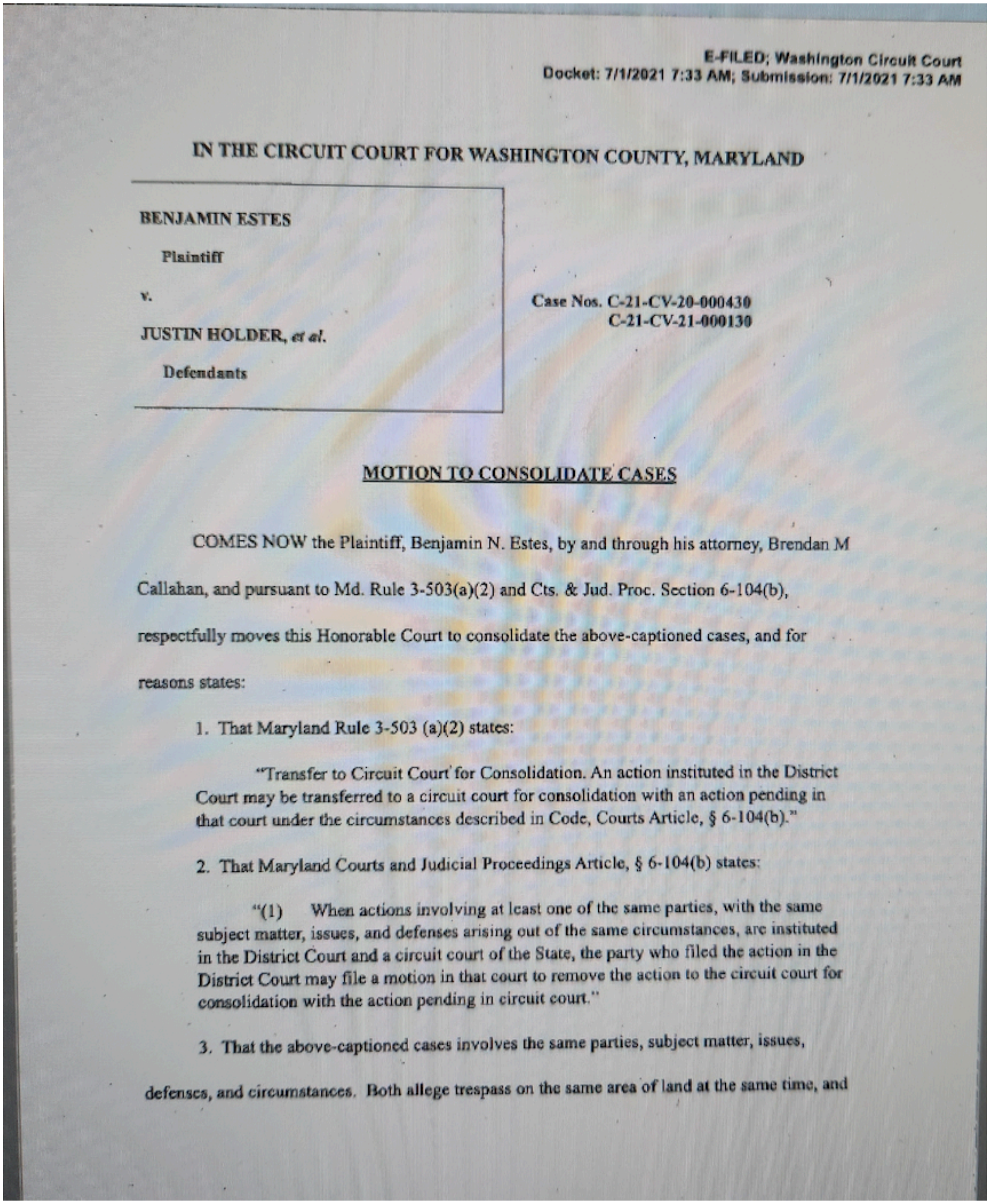
Justin K Holder

I hereby certify that on this 18th day of May, 2021, the foregoing paper filed via MDEC and thus served electronically upon all registered parties, including:

Brendan Callahan, Esq. Plaintiff
Matthew Ruble, Esq. Defendant
Robert L. Kline, III, Esq. Defendant
Talley Kovac's, Esq. State of Maryland
Aaron Neal, Esq. Plaintiff
Roland David Pembroke, Esq. Plaintiff

Justin K Holder

Justin Holder, Pro Se



E-FILED; Washington Circuit Court
Docket: 7/1/2021 7:33 AM; Submission: 7/1/2021 7:33 AM

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, *et al.*

Defendants

Case Nos. C-21-CV-20-000430
C-21-CV-21-000130

MOTION TO CONSOLIDATE CASES

COMES NOW the Plaintiff, Benjamin N. Estes, by and through his attorney, Brendan M Callahan, and pursuant to Md. Rule 3-503(a)(2) and Cts. & Jud. Proc. Section 6-104(b), respectfully moves this Honorable Court to consolidate the above-captioned cases, and for reasons states:

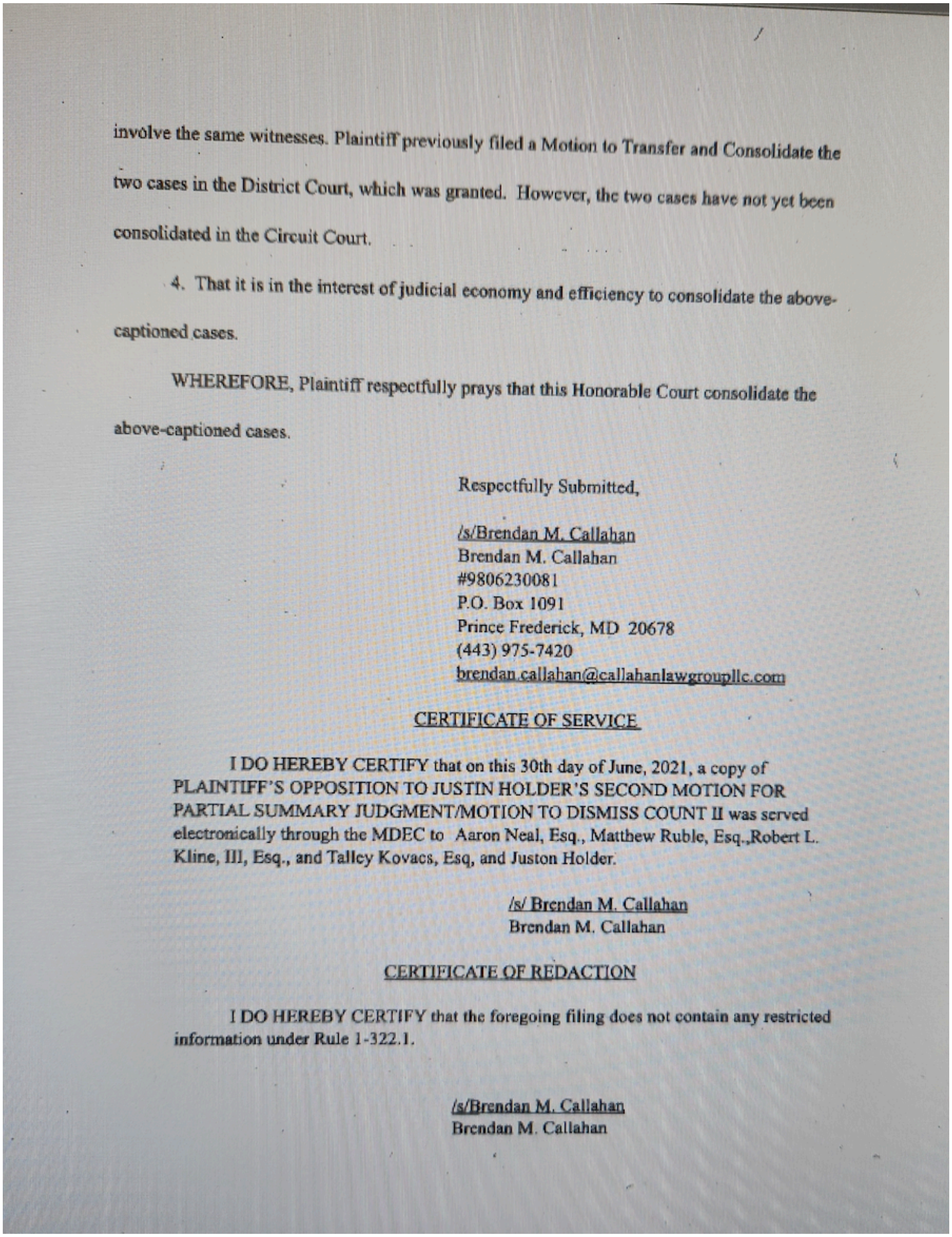
1. That Maryland Rule 3-503 (a)(2) states:

> "Transfer to Circuit Court for Consolidation. An action instituted in the District Court may be transferred to a circuit court for consolidation with an action pending in that court under the circumstances described in Code, Courts Article, § 6-104(b)."

2. That Maryland Courts and Judicial Proceedings Article, § 6-104(b) states:

> "(1) When actions involving at least one of the same parties, with the same subject matter, issues, and defenses arising out of the same circumstances, are instituted in the District Court and a circuit court of the State, the party who filed the action in the District Court may file a motion in that court to remove the action to the circuit court for consolidation with the action pending in circuit court."

3. That the above-captioned cases involves the same parties, subject matter, issues, defenses, and circumstances. Both allege trespass on the same area of land at the same time, and



involve the same witnesses. Plaintiff previously filed a Motion to Transfer and Consolidate the two cases in the District Court, which was granted. However, the two cases have not yet been consolidated in the Circuit Court.

4. That it is in the interest of judicial economy and efficiency to consolidate the above-captioned cases.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court consolidate the above-captioned cases.

Respectfully Submitted,

/s/Brendan M. Callahan
Brendan M. Callahan
#9806230081
P.O. Box 1091
Prince Frederick, MD 20678
(443) 975-7420
brendan.callahan@callahanlawgroupllc.com

CERTIFICATE OF SERVICE

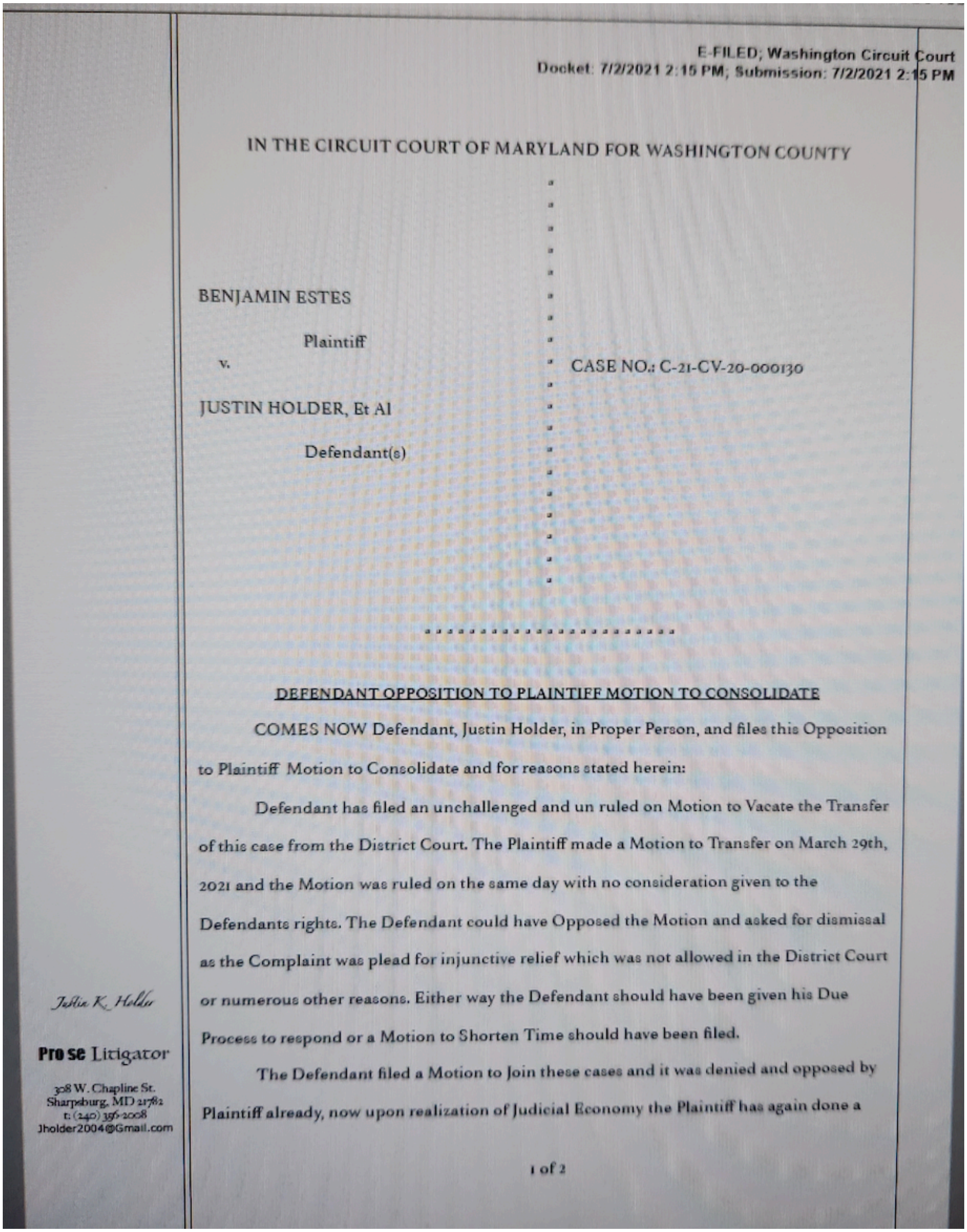
I DO HEREBY CERTIFY that on this 30th day of June, 2021, a copy of PLAINTIFF'S OPPOSITION TO JUSTIN HOLDER'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT/MOTION TO DISMISS COUNT II was served electronically through the MDEC to Aaron Neal, Esq., Matthew Ruble, Esq.,Robert L. Kline, III, Esq., and Talley Kovacs, Esq, and Juston Holder.

/s/ Brendan M. Callahan
Brendan M. Callahan

CERTIFICATE OF REDACTION

I DO HEREBY CERTIFY that the foregoing filing does not contain any restricted information under Rule 1-322.1.

/s/Brendan M. Callahan
Brendan M. Callahan



IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES

Plaintiff

v.

CASE NO.: C-21-CV-20-000130

JUSTIN HOLDER, Et Al

Defendant(s)

* *

DEFENDANT OPPOSITION TO PLAINTIFF MOTION TO CONSOLIDATE

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Opposition to Plaintiff Motion to Consolidate and for reasons stated herein:

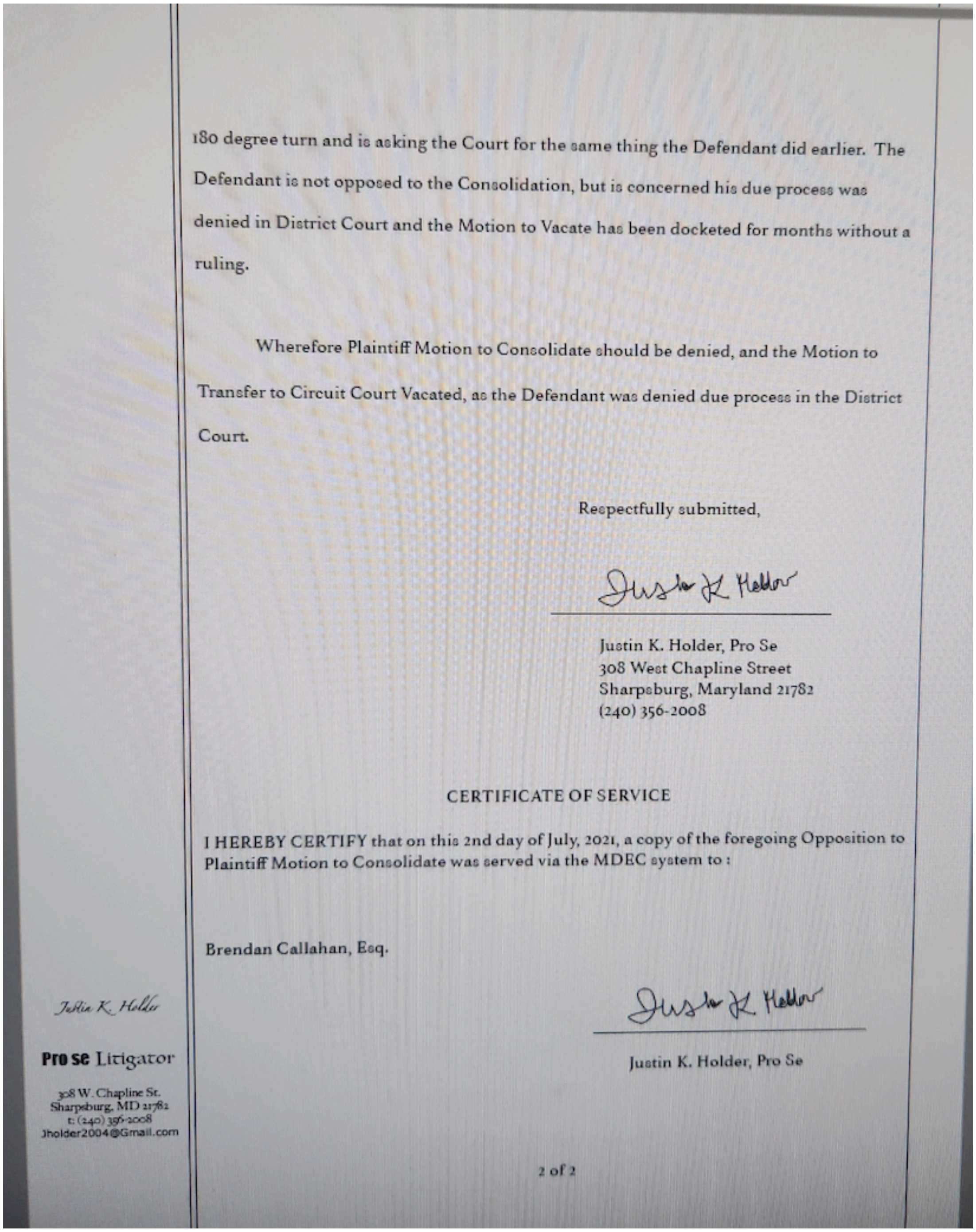
Defendant has filed an unchallenged and un ruled on Motion to Vacate the Transfer of this case from the District Court. The Plaintiff made a Motion to Transfer on March 29th, 2021 and the Motion was ruled on the same day with no consideration given to the Defendants rights. The Defendant could have Opposed the Motion and asked for dismissal as the Complaint was plead for injunctive relief which was not allowed in the District Court or numerous other reasons. Either way the Defendant should have been given his Due Process to respond or a Motion to Shorten Time should have been filed.

The Defendant filed a Motion to Join these cases and it was denied and opposed by Plaintiff already, now upon realization of Judicial Economy the Plaintiff has again done a

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com



180 degree turn and is asking the Court for the same thing the Defendant did earlier. The Defendant is not opposed to the Consolidation, but is concerned his due process was denied in District Court and the Motion to Vacate has been docketed for months without a ruling.

Wherefore Plaintiff Motion to Consolidate should be denied, and the Motion to Transfer to Circuit Court Vacated, as the Defendant was denied due process in the District Court.

Respectfully submitted,

Justin K Holder

Justin K. Holder, Pro Se
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2021, a copy of the foregoing Opposition to Plaintiff Motion to Consolidate was served via the MDEC system to :

Brendan Callahan, Esq.

Justin K Holder

Justin K. Holder, Pro Se

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com

Justin K. Holder
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2001

November 12th, 2021

Re: Motion to Consolidate Claims -Bill *Quia Timet* “Stone” or Collaterally Estoppel - C-21-CV-20-000430 Estes V. Holder et al. - Not Urgent - Please respond in 30 days

To the Honorable Court,

On May 10th, 2020 I filed an action titled Bill *Quia Timet* (BQT). The Bill requested a very simple declaratory judgement, which was denied with prejudice in case C-21-CV-20-000371, and Appealed. The Court of Appeals has returned the claim to the Court and it is again live. I will be moving for judgment in that action, and I am writing one last time to the Court for Judicial economy. The Stone Monument in the BQT is at the end of a line that connects the HOLDER/MORRAL/YOUNG properties on the SouthWest end to the UNCLE EDDIE/ESTES properties on the NorthEast end. I have made a “Table of Deeds" and small sketch of the Tax Map in 1967 to illustrate, and appended it to this short letter, (Table of Deeds). The Table of Deeds highlights the land records that create, the “Cost/Keedy” Division Line, and in the aforesaid Young case ending 371, Young is asking *inter alia* to extinguish an express “wagon road” that is metes and bounds described as following the “Cost/Keedy” division line. The Plaintiff in the instant case, Mr. Estes in 3 interrogatory answers has locked himself into the “Cost/Keedy” division line on the “1832 Deed”, See letter “Request For Motion for Sanctions - Case C-21-Cv-20/21-000130/430” filed October 7th, 2021 and incorporated herein by reference. It is the Defendants obligation as Attorney General in declaratory judgement to give all parties with interest “their day in Court”, and therefore the Defendant request permission to file a Motion under Rule 2-503(b) to Consolidate these actions.

WHY CONSOLIDATION WILL SAVE TIME AT TRIAL AND EXPENSE

Without going into great detail, there are currently multiple discovery disputes, Expert Communications and testimony in one case, relevant to the other, and allegations of bad faith flying everywhere. The consolidation of the claim of the “BQT STONE” will lock in the “Cost/Keedy” division line and eliminate a few days trial in both cases, protect everyone’s rights preventing piecemeal appeals and greatly reduce the need for expensive title experts. Most importantly there is not really any dispute as the Honorable Court will see in “Table of Deeds”, it is a very simple Declaratory Judgment. The “BQT STONE” was not found by the Surveyor whom performed all the Survey work previously (with admittedly no title work), and in deposition said Surveyor stated he could have been mistaken. The BQT Stone is now located with certainty by another surveyor and will end the controversy and give rise to the proceeding.

I would further suggest that if any parties object to the Motion to Consolidate they could just simply state said objection in a line to the Honorable Court. I am making the request because I have not been able to get a straight answer out of any other parties on the BQT Stone DJ action thus far. In Opposition and Motions the parties claim to have no interest in the Declaratory Judgement, but in discovery and expert opinion request claim they do not “agree with my theory”. So I am making this very simple request out of an abundance of caution. I request the Court allow me to file Motion to Consolidate the Cases of Young and Estes, or at least the BQT claim; unless a party files a line objecting that clearly states that party has no rights or interest to protect in the "BQT Stone". This will make clear the *res judicata* and collateral estoppel of the claim, and eliminate the extra time and expense of litigating the same issue twice; or risk of incompatible results.

In the BQT I offered to pay $2500 for the Court's time in hearing the BQT. I did this because I was certain it would expedite justice for all parties. 6 months later there has been no challenge to the merits of the BQT, and I do not believe any party can bring a challenge to the fact finder on the merits of the BQT. I filed the BQT in Good Faith, and included a Rule 2-211 Motion to protect everyones rights. I would have done it differently with the experience I have gained, but I had the best of intentions, and still do.

I kindly request permission to Consolidate these claims or Estoppe the Plaintiff with the judgement of the BQT Stone in Case c-21-CV-20-000371.

Respectfully,

Justin Holder
308 West Chapline Street
Sharpsburg, MD 21782
jholder2004@gmail.com
(240) 356 - 2008

Attachments: Table of Deeds w/ Demonstrative 1967 Tax Map

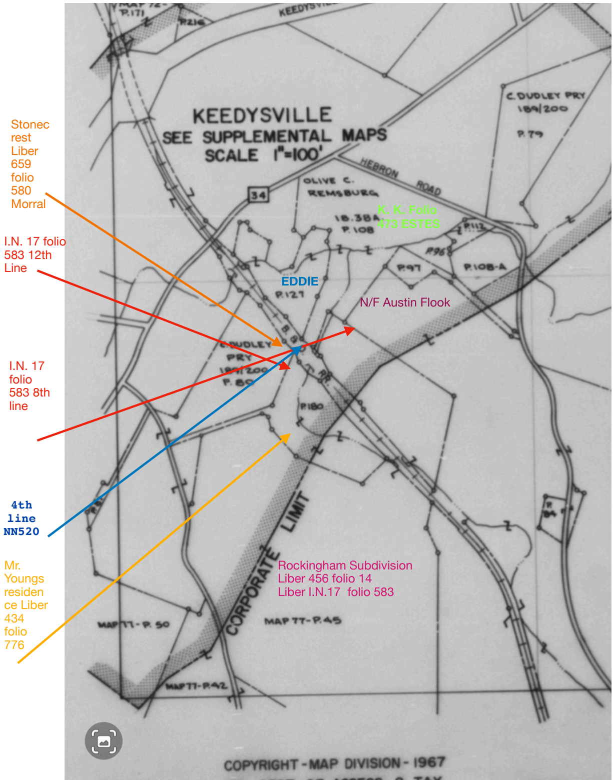
THE COST/KEEDY DIVISION LINE PRE-RAILROAD to PRESENT

BEARING AND DISTANCE AS DESCRIBED ON DEED - LINE DEED REFERENCES CURRENT OWNER AT BOTTOM >>>>>	IN17 \538/ 230/139 J.H. KEEDY ROY G. REEDER YOUNG	434/776 ROY G. REEDER HARRY WICKLINE 885/111 YOUNG	456/14 PARCEL 293 104/541 HOOVER REAR LOT ESTES	L 408 F137 HUTZELL SAME SINCE 1872 EDDIE	L659 F580 COST JENIFER BUTTS PLAT 8292 STONE CREST.	NN520 COST NINE COURSES DOWN CREEK EDDIE
NORTH 50 Degrees WEST 73 PERCHES TO A STONE ON THE WEST BANK OF CREEK	8th line on both deeds 230/139 same as	Railroad bisected first carve out off 230/139	Last line on deed calls N 50 W 962.16 Feet to beg 104/541	N/a this line intersects the 2nd line on deed	N/A	N/a
SOUTH 33.33 Degrees WEST 3 PERCHES TO A STONE	9th line both deeds	North of Railroad	N/A works around 104/541	2nd line North 31 East 9 Perc	N/a	6th line N31 East 9 Perches
SOUTH 22.5 Degrees WEST 17 PERCHES TO A STONE AT THE END OF A STONE ABUTMENT	10th line both deeds, fred set an iron pin	North of Railroad not part of this carve off	Follows railroads to the end of the stone abutment	1st line starts at Stone on bank North 22 East 17 P	N/A	5th line N22 East 17 Perches first line in creek
SOUTH 79 Degrees WEST 7.9 PERCHES TO [THE BQT} STONE	11th line crossing railroad	End of this line begins parcel 1/3	4th call to the BQT 434/776 ref	N/a. Binds on Railroad back to beg.	N/A	4th line N77 East 8 P to the Creek
SOUTH 24 Degrees WEST 27.5 PERCHES TO A MARKED HICKORY TREE and LATER A HICKORY STUMP [YOUNG WOOD PILE]	12th line both deeds and used to describe BQT Stone on GCQC	1st line of Parcel 1/3 on 434/776 and fred set iron pins kinda close 885/111	N/a follows last call of 434/776 in reverse to the end of parcel 1	N/a	8th line N 24 East 29.5 33 feet or 1/2 Railroad Row to centerline	3rd line N 23 East 26 P to a [BQT] Stone at the end of FFE [57th line]
SOUTH 71.5 Degrees WEST 31.7 PERCHES TO A STONE IN A LANE [YOUNG DRIVEWAY]	13th line both deeds panhandle on plat 2499	2nd line 434/776 end of line sets parcel 2	11th line and references the tone in a lane	N/a wagon road 402/394 burdens	7th line N71 E 30 P 2nd line NN520 ref	2nd line N 71 East 58P Young Parcel 2
NORTH 28 Degrees WEST 9.3 Perches TO A STONE FOUND	N/a	N/a	N/a	2nd call for wagon road S36 E10.6	9th line same stone was found	FFE = Resurvey of Felfoot enla
NORTH 31 Degress WEST 13.2 PERCHES TO A STONE/NOW TBAR @ COST CROSS	N/a	N/a	N/a	1st call for wagon road S30.75 E14 Cost Cross	10th line same then 12th line w/ NN520	The 57th line of ffe is where ffe cross creek

NOTES: Young Deed 885/111 calls to eastern boundary of 659/580 - NN520 & Estes
Predecessor Deed 1092/994 calls to Hutzell 408/137 - NN520 BOUNDARY

"As a general canon of boundary law, it is well-settled that a call to an adjoining boundary takes precedence over a metes and bounds description in the same instrument." *Ski Roundtop, Inc. v. Wagerman,* 79 Md. App. 357, 367, 556 A.2d 1144 (1989). Thus, to the extent that any conflict exists by reason of course and distance descriptions, in the absence of any evidence of contrary intention, the calls control. *See Delphey v. Savage,* 227 Md. 373, 378, 177 A.2d 249 (1962) (calls to monuments given precedence over courses and distances); *Zawatsky Constr. Co. v. Feldman Dev. Corp.,* 203 Md. 182, 187, 100 A.2d 269 (1953); *Dundalk Holding Co. v. Easter,* 195 Md. 488, 495, 73 A.2d 877 (1950); *Wood v. Hildebrand,* 185 Md. 56, 60-61, 42 A.2d 919 (1945) ; *Conrad v. Williams,* 121 Md. 35, 40, 88 A. 36 (1913) ("[W]here the courses and distances in a grant do not agree with the call, the call will prevail and the courses and distances will be rejected."); *Stewart v. May,* 111 Md. 162, 174, 73 A. 460 (1909); *Houck v. Loveall,* 8 Md. 63, 69 (1855)

Tax Map pulled from Maryland Archive from 1967 - I.N. 17 folio 583 was first subdivided in 1966 - Deeds L434/f776 N/F Young and L456f15 N/F Estes and Rockingham



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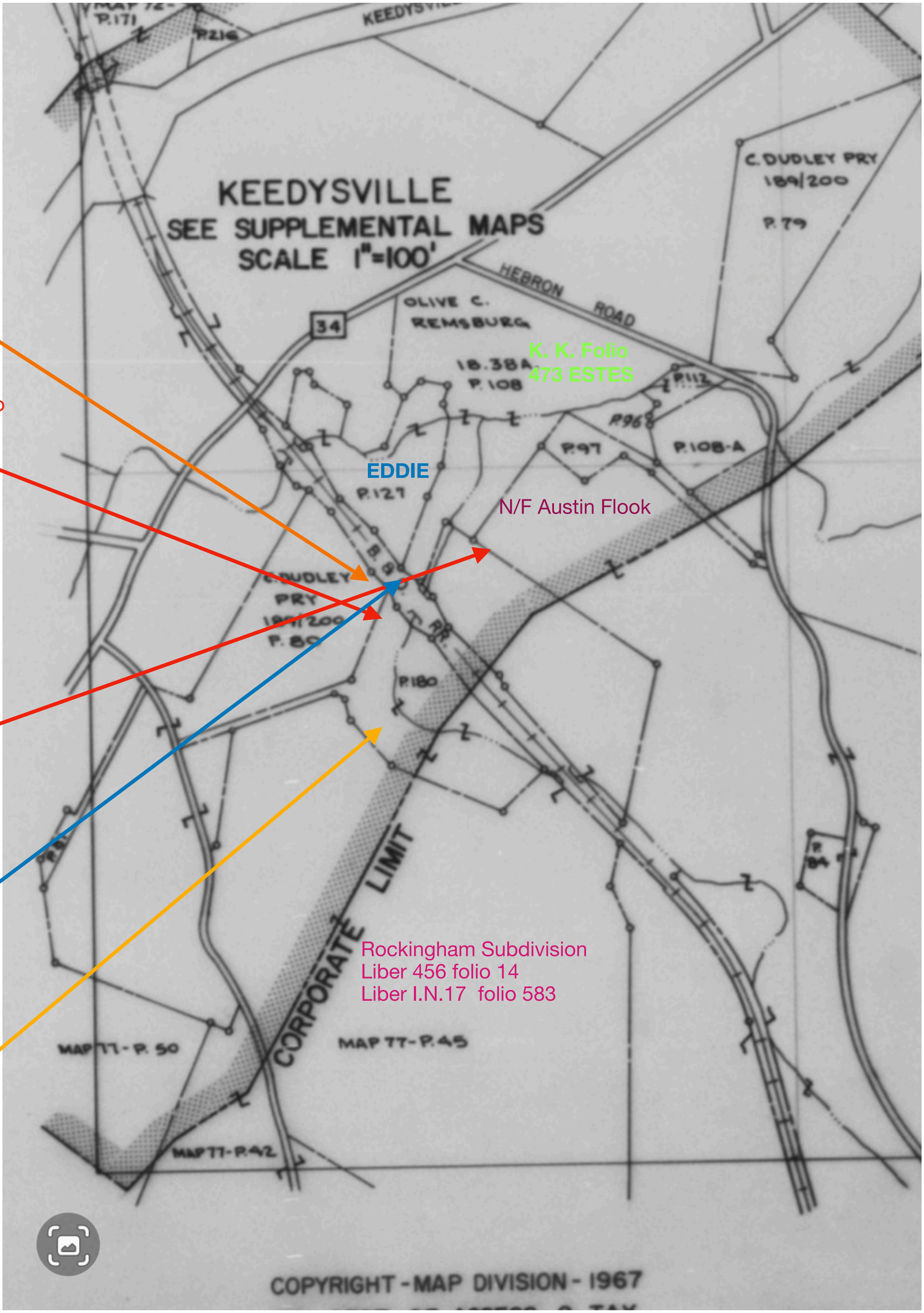
MAP 72-
P.171
P.216
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SEE SUPPLEMENTAL MAPS
SCALE 1"=100'
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P.79
HEBRON ROAD
OLIVE C.
REMSBURG
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P.108
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K. K. Folio
473 ESTES
P.112
P.96
P.97
P.108-A
EDDIE
P.127
N/F Austin Flook
B.&O. R.R.
C. DUDLEY
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P.89
P.180
P.84
CORPORATE LIMIT
Rockingham Subdivision
Liber 456 folio 14
Liber I.N.17 folio 583
MAP 77-P.50
MAP 77-P.45
MAP 77-P.42
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